UNIVERSITY OF PENNSYLVANIA

THE BRITISH ADMIRALTY BOARD AS A FACTOR IN COLONIAL ADMINISTRATION, 1689-1763

JOSEPH D. DOTY

A THESIS

IN HISTORY

PRESENTED TO THE FACULTY OF THE GRADUATE SCHOOL IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

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ABBREVIATIONS

Adm.—Admiralty Records. In referring to the Admiralty records the abbreviation is followed by the series number and that in turn is followed by the volume or bundle number and the date of the document. For example, Admiralty records, series 2, volume 1059 is written: Adm.2.1059. Other records in the Public Record Office are referred to in the same way.

A. P. C. Colonial—Acts of the Privy Council of England, Colonial Series, 6v.

Clowes—A History of the Royal Navy, 7v., Sir W. L. Clowes.

C. O.—Colonial Office Records (State Papers, Colonial).

Fortescue—Calendar of State Papers, Colonial Series, America and West Indies, 1681–1698, 6v., The Hon. J. W. Fortescue, Editor.

Headlam—Calendar of State Papers, Colonial Series, America and West Indies, 1699–1714, 11v., Cecil Headlam, Editor.

Hist. Mss. Cm.—Reports of the Historical Manuscripts Commission.

L. J.—Journals of the House of Lords.

Mahaffy—Calendar of State Papers, Domestic Series, of the Reign of Anne, 1702–1704, 2v., Robert P. Mahaffy, Editor.

Rawlinson—Rawlinson Manuscripts. The abbreviation is followed by the volume number.

Redington—Calendar of Treasury Papers, 1556/7-1728, 6v., Joseph Redington, Editor.

Richmond—The Navy in the War of 1739–1748, 3v., H. W. Richmond.

Sainsbury—Calendar of State Papers, Colonial Series, America and West Indies, 1661–1677, 5v., W. Noel Sainsbury, Editor.

Shaw—Calendar of Treasury Books and Papers, 1729–1745, 5v., William A. Shaw, Editor.

S. P. D.—State Papers, Domestic.

S. P. D. E. B.—State Papers, Domestic, Entry Books.

S. P. D. Naval—State Papers, Domestic, Naval.

Treas.—Treasury Records.

PREFACE

The unknown author of *Reflections on Our Naval Strength* wrote, about 1693, that because of weaknesses and evil practices in the English navy it would be as difficult to defeat the French in the war then being waged "as for a hundred fat oxen upon Salisbury Plain to catch one greyhound."[1] This and repeated criticisms of like nature call to one's attention the fact that the period, 1689-1763, was one, largely of warfare, in which naval problems of the greatest moment arose for solution.

It might be thought that the Admiralty Board was interested only in war or in the preparation for war and that in a study of such a part of its work as its participation in colonial affairs everything would revolve about the wars of the period. In a measure this is true for the Board influenced the American colonies in dealing with five principal problems; namely, the establishment and maintenance of colonial vice-admiralty courts, the collection of rights and perquisites of the admiralty, provisions for naval defence, the establishment and maintenance of a convoy system and the impressment of seamen. In spite of the close relation of all these, especially the last three, to the wars that were waged there were difficult peacetime aspects of each which taxed the patience and ability of the Admiralty Board. Therefore it appears more advantageous, as a method of treatment, to consider each problem completely for the whole period rather than to treat all five problems as depending wholly upon each successive war. This involves a certain amount of repetition but, on the other hand, perhaps a degree of unity and order has been attained which otherwise might inevitably have been sacrificed.

In the pages that follow a conscious effort has been made to keep the interest centered upon the single problem of the method of the Admiralty Board in dealing with strictly colonial affairs which were forced upon it. Consequently, the introductory chapter is by no means a history of the Board. Its complete work in war and peace, its successes and failures and the powerful political factors which influenced the shaping of policy and the

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[1] Naval Miscellany, *Naval Records Society*, Vol. 40, p. 157.

numerous changes in membership must be left to a subsequent work. Each of the five problems which have been mentioned above and which are treated, within certain limits, in the following pages might well form the subject of an independent study. In that case, however, the center of interest would necessarily shift from the Admiralty Board in London to the mainland and insular settlements of the British in America. However that may be it is hoped that to observe the Admiralty Board at work on colonial problems and to understand its administrative position in the British scheme of colonial control will appear to be sufficient justification for attempting the following study.

I

Introduction—The Admiralty Board

In a bitter strain Samuel Pepys wrote of the Admiralty Board in 1693, "The most likely men by their learning and mathematics for understanding the business of the Navy . . . are the persons of the whole number of that Commission who choose of their own accord to lay it down."[1] Expressions of opinion, similar to this or even more severe, were not confined to the years of the War of the League of Augsburg but continued to be voiced until the end of the Seven Years' War. Consequently the question quite naturally arises as to the nature of the Admiralty Board and the duties which it performed.

An adequate description of the Board and its functions is indeed difficult to find and, therefore, in the following pages an effort is made to explain briefly its historic development, its organization and method of transacting business, the powers it exercised and the relationship which existed between it and other organs of government and administration. This, perhaps, will throw light upon the Board as a factor in colonial affairs and will help to make clear in what respect it was qualified to deal with some of the most complex and vexing colonial problems. Samuel Pepys' criticism, true as it was at the time he wrote, may appear much too harsh as a general description of the Board during the first sixty-three years of the eighteenth century.

Interest in the civil administration of the navy can be discerned at an early date and its importance had increased greatly by the time of Henry VIII. In this reign, men-of-war were built, docks were constructed, the ordinance was remodeled and Trinity House was incorporated. The navy was viewed as the personal property of the Crown and was, for a time, managed by the sovereign through a royal officer styled the Clerk of the Ships. In 1546, however, a navy office was established to control the affairs of the navy under the direction of an officer known as the Lord High Admiral.

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[1] Pepys' Naval Minutes, *Naval Records Society*, Vol. 60, p. 295.

By 1540, the administration of admiralty affairs had separated naturally into three parts based upon the distinct functions exercised by each. The Lord High Admiral was chosen by the King and was the chief admiralty officer under him. As such he had a large share in the formulation of navy policy and he exercised executive powers. The Navy Board was well established, although its position was subordinate to that of the Lord High Admiral and its duties were civil and administrative in character. The High Court of Admiralty, nominally under the control of the Lord High Admiral, exercised legal and judicial functions. However, the wide jurisdiction and extensive powers enjoyed by the High Court began to suffer severe curtailment as early as the reign of Henry VIII.

In 1560, regulations for the direction of admiralty affairs were issued by the Crown. Definite officers such as vice-admirals of the fleet, master of ordnance, treasurer and comptroller of the navy and surveyors of marine causes and victualling were named and their duties were defined. The Navy Board, which met at stated intervals, was required to submit reports of its proceedings to the Lord High Admiral.

Admiralty practice and administrative organization underwent numerous temporary changes until the Restoration brought the Stuarts back to England. These sovereigns displayed an active interest in the navy. James, Duke of York, was appointed Lord High Admiral in 1660, and he commissioned a new Navy Board under the Great Seal of England. As originally constituted there were three officers and three commissioners as members of the Board, but in 1662 a fourth commissioner was added. Samuel Pepys was a clerk of the Navy Board and the vast influence he later exercised began at this time. The Duke of York continued to act as Lord High Admiral until 1673 when he resigned because he could not subscribe to the Test Act. For a short time Charles II exercised a personal control over the navy. Then the office of Lord High Admiral was placed in commission and this arrangement continued until the accession of James II in 1685.

While the Admiralty Commission existed from 1673 to 1685 there were three First Commissioners. The first of these was

Prince Rupert, who was followed by Sir Henry Capel in 1679 and Daniel Finch in 1680. Samuel Pepys served as secretary until 1679 and through him the Duke of York made his will known. In that year, however, James left England and Pepys was thrown into the Tower. The personal interest of Charles II in the navy had increased and from 1679 until his death he controlled the Commission through the Privy Council.

Upon his accession in 1685, James II abolished the Admiralty Commission and assumed personal control of the affairs of the navy. Samuel Pepys was restored to the office of secretary of the Navy Board and at this time his influence was exceedingly great for it was through him that the royal control was exercised. This arrangement continued until the Revolution of 1688-9.[2]

In 1689, after the success of the Revolution was assured, the certainty of war made imperative the speedy reorganization of admiralty administration. The example of the Admiralty Commission, 1673-1685, was followed and this form of organization was destined to survive. The Admiralty Board was commissioned to exercise the functions of the Lord High Admiral and it was composed of seven members, a First Lord or Commissioner and Six Lords or Commissioners of the Admiralty. The first commission passed the Great Seal on March 8, 1698, and the Board held its first meeting on the following day. Admiral Arthur Herbert presided as First Lord and Lord Carberry, Sir Michael Wharton, Sir Thomas Lee, Sir John Chicheley, Sir Thomas Lowther and William Sacherevill sat as Lords of the Admiralty. The first meetings of the Board were held in Admiral Herbert's lodgings in Channel Row, Westminster.[3]

The Admiralty Board had a continuous existence until January, 1702, when the commission was abolished and the Earl of Pembroke was created Lord High Admiral. In May, 1702, Pembroke was succeeded by the Prince Consort, George of Denmark, who held the office of Lord High Admiral until his death in October, 1708. For one month, from October 29, to

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[2] This brief historical sketch is based chiefly upon Clowes, W. L., *The Royal Navy*, Vol. 2, Chap. 22: Hamilton, Sir R. V., *Naval Administration:* Andrews, C. M., *Guide*, 90A, Vol. 2, pp. 1–2.

[3] *Adm.* 3.1 ff.

November 29, 1708, Queen Anne, following the example of James II, assumed a personal responsibility for the affairs of the navy. For almost a year thereafter the Earl of Pembroke was again Lord High Admiral but, finally, in 1709, the Admiralty Board was reestablished and this arrangement continued unbroken until 1763. While Prince George was Lord High Admiral he was assisted by a council, usually of six members, which was, in fact, a board.[4]

The three-fold division of admiralty functions, which has been mentioned as being typical of an earlier period, was continued after 1689 and became fixed. The Admiralty Board performed the specific duties which formerly belonged to the Lord High Admiral and, in addition, exercised a general control over every phase of admiralty administration. A second group of functions was exercised by a number of minor boards and offices of which the Navy Board was typical and the most important. Finally, the chief legal functions and duties were performed by the High Court of Admiralty or, as far as possible, under its immediate supervision. It may be of value to mention in turn the principal duties and functions of the Admiralty Board, the Navy Board and the High Court.

Although the actual powers of the Admiralty Board were less than its theoretical powers, it was the superior, responsible body charged with the control of admiralty affairs. Its specific duties were fixed by law in 1690.[5] By this Act of Parliament all power, authority and jurisdiction which had ordinarily been exercised by the Lord High Admiral were to be exercised by the Board. It was specifically provided, however, that no new or additional powers were to be enjoyed by the Board by virtue of this Act. It might seem as if this Act was designed to confirm to the Board a wide range of customary and discretionary powers, but in actual practice this was not true. The Act served to secure the control of the King in Council over the Board without granting to it the right of exercising many of the powers which the Lord High Admiral had assumed. The subsequent Act of 1749 was in

[4] Clowes, Vol. 2, pp. 229–30. *Cf.* The Minutes of the Admiralty Board, *Adm.* 3.

[5] 2 William and Mary, session 2, c.2, 1690.

reality an admiralty code which defined clearly the duties of the Board as they existed according to previous law or custom.[6]

In detail, the duties of the Admiralty Board were principally executive and directive in nature and it supplied the chief coordination of effort that existed between the subordinate boards. Subject to the restrictions placed upon it by law, or by the action of the King in Council, or of one of the Secretaries of State the Board played a large part in the formulation of naval and admiralty policy. It controlled the movement of ships, assigned ships to those duties which were necessary for the carrying out of naval policy and accepted responsibility for the success or failure of all these measures which were adopted. Furthermore, it issued orders and instructions and in observing the care and success with which these were carried out corresponded with naval and vice-admiralty officers, boards and departments of government. The Board made appointments and signed warrants of minor as well as of important character and exercised a direct influence upon such essential matters as convoys, imprests, transports and supplies. Above all, it was the duty of the Admiralty Board to provide for the naval defence of England and the Empire.

The Navy Board was the chief of the minor boards which were subject to the general direction of the Admiralty Board. Although the number of these minor boards and offices varied, there were ordinarily sixteen, the chief of which were the Victualling Board, the Board for Sick and Wounded Seamen, the Transport Office, the Treasurer's Office and the Chest at Chatham. Each of these performed a particular duty and kept its own records, although all were nominally under the direction of the Admiralty Board and carried on a large part of their correspondence through it. As a matter of fact, the control exercised by the Admiralty Board was at best slight and frequently nonexistent, and as a result there was a great amount of confusion and duplication of effort. It is important to note that these boards and offices occupied no central building but were scattered in Westminster, London and the south of England.

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[6] 22 George II, c.33, 1749.

The Navy Board, although older in point of time, was subordinate to the Admiralty Board and its duties were chiefly civil and administrative. Subject to the orders of the Admiralty Board, it was responsible for the physical condition of the fleet. It saw that ships were built according to order, equipped and repaired and it was charged with the task of keeping all royal vessels in a seaworthy condition. It provided for the building and administration of docks, warehouses, careening stations, and other adjuncts of the navy and took over condemned prizes for the purpose of preparing them for service. Also, the members of the Navy Board were responsible for the condition and efficiency of all non-combatant seamen attached to the navy. They received and executed in detail orders given them by the Admiralty Board, kept an account of all their financial transactions, held their own meetings and kept a separate set of minutes.

The Judge of the High Court of Admiralty was the chief legal officer of the admiralty and presided over the High Court. This court followed the procedure laid down by civil law, and sat as a prize court. Furthermore, before it were brought to trial various other marine causes, both of a criminal and commercial nature. Its former jurisdiction was by this time much reduced as the result of a long conflict it had waged with the common-law courts. Upon proper authority the Judge issued letters patent under the admiralty seal to admiralty and vice-admiralty officers. He received accounts of rights and perquisites of the admiralty and in addition to this, as far as the colonial courts were concerned, received reports of their proceedings and issued legal directions for their guidance. He was assisted in the discharge of his legal duties by a number of lawyers all belonging to Doctors' Commons. The Judge and other officers of the High Court submitted legal opinion when the Admiralty Board or other competent authority required it.

Although the authority exercised by the Admiralty Board appears rather extensive, it was, in actual practice, subject to several limitations. As an administrative board it was subject to a varying degree to the control of Parliament, the King in Council and the Secretaries of State. The fact that such control was exercised was not unusual as an eighteenth century practice.

The significant fact in this connection, however, is that the Board was constantly held to account for policies and details for which it was not always wholly responsible. Before the work of the Board can be property understood the nature of these restrictions must be made clear.

Parliament exercised an undoubted right of enacting laws for the direction and control of the Admiralty Board. Such an Act as that of 1708, which dealt with the number and duties of convoys and cruisers east of Cape Finisterre, placed a limitation upon the Board's freedom of action. The conditions which existed when the law was passed were subject to change, yet the terms of the law continued in force without change.[7] This and other laws dealing with admiralty matters frequently hindered the Board in the discharge of its duties and hence the powers of Parliament were not always wisely used.

The Admiralty Board was subject from time to time to the commands of committees of investigation of the House of Lords. Before 1713, several such committees were appointed and the Board was called upon to account for the manner in which the affairs of the navy had been administered. Several of these investigations proved to be necessary, but at the same time the Admiralty Board complained that it was greatly hindered in the exercise of its duties by the amount of time that was spent in preparing reports and issuing statements which the committees demanded.[8]

The King in Council and the Secretaries of State exercised great authority over the Admiralty Board. During the reign of William III orders issued by the Privy Council or a Secretary of State, represented, in large measure, the will of the sovereign but after that reign the personal influence of the King declined and the orders that were issued represented the will of the chief ministers of state.

The attitude of the Privy Council toward admiralty affairs underwent a marked change during the period. In the War of the League of Augsburg, 1689-1697, and to a slightly less degree

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[7] 6 Anne, c.65.
[8] *L. J.*, Vol. XVIII.

in the War of the Spanish Succession which followed, the Privy Council directed the work of the Admiralty Board with great care. It was interested not only in naval policy but also in the details of admiralty administration. It was accustomed to issue specific orders which dealt with convoys, defence, and colonial vice-admiralty courts. Although the Privy Council did not formally relinquish the right of control during the later years of the period it was exercised sparingly. As a result, as time went on, the Admiralty Board was allowed a greater degree of freedom and its authority became greater in every respect.

It is a fact of great importance, however, that the Lords of the Admiralty were at no time wholly without influence in the deliberations of the Privy Council. Even during the period when the members of the Council were most active in dealing with admiralty matters they customarily sought the advice of the Board and referred questions to it for expert opinion. Furthermore, the Board read and commented upon memorials and petitions and furnished technical information as the need arose. The Privy Council did not always accept the advice it received but the influence which the Admiralty Board exercised in this way was certainly not negligible. Many Lords of the Admiralty were also members of the Privy Council. This was true of the Earl of Pembroke, the Earl of Bridgewater, Sir Charles Wager and Lord Anson, all of whom were men of the greatest influence. During the general period of war which lasted from 1739 to 1763 the Privy Council, or the committee of the council which was responsible for the management of military affairs, called the more important Lords of the Admiralty into their deliberations.

The influence exercised by Secretaries of State over the Admiralty Board increased during the period. The supervision of colonial affairs was one of the duties of the Secretary of State for the Southern Department. The orders which this officer issued to the Admiralty Board were always couched in terms of greatest respect but they gradually became more frequent and more important. By the middle of the eighteenth century the Secretary of State was looked upon as the officer who expressed the will of the King in Council and to whom communications intended for the King were addressed. Consequently, in those

matters relating to the navy in which the Privy Council played an important part the Secretary of State was usually its agent.

The relationship which existed between the Admiralty Board and the Treasury Board, the Board of Trade and the Navy Board was, in general, quite clearly defined. It is true, however, that two or more of these were often interested in the same colonial problem and this frequently resulted in duplication of effort rather than in cooperation.

Presumably, the Admiralty Board and the Treasury Board were coordinate, administrative bodies and the form of the correspondence carried on between the two indicated their equality. Upon two occasions the Admiralty Board was quick to stress this equality. In 1722, Josiah Burchett, secretary of the Admiralty Board, wrote to Horatio Walpole, Receiver and Auditor-general of the customs in the American colonies, concerning the rights and perquisites of the admiralty. Burchett pointed out that the Lords of the Admiralty admitted that the Treasury Board possessed the right to expend, in the King's name, all droits that were collected, but he insisted that the collection of this revenue was vested legally in those officers whom the Admiralty Board appointed. The Lords of the Admiralty desired to make it clear that they did not propose to interfere with the duties of the Treasury Board and in turn they wished to be left free in the exercise of their own duties.[9] In 1727, the Admiralty Board refused a request which was made of it by the Lords of the Treasury. They, in turn, were piqued but did nothing beyond returning a spirited reply.[10] In actual practice, however, the Treasury Board exercised an ascendency over the Admiralty Board. The general control which it exercised over the expenditure of money accounts in large measure for this.

The position of the Admiralty Board was distinctly superior to that of the Board of Trade. The Board of Trade furnished information or gave advice whenever it was called upon to do so. Not infrequently it made independent suggestions to the Admiralty Board, or to other agencies of government concerning

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[9] Redington, 12 October, 1722, pp. 163–4.
[10] *Treas.* 29.25, 11 January, 1727: Redington, 10 January, 1727, pp. 483–4.

admiralty affairs but these were never more than suggestions.

It is clearly evident that a close and rather cordial relationship existed between the Admiralty Board and the Board of Trade from the time of the latter's creation. In July, 1696, before the Board of Trade was in its permanent quarters the Lords of the Admiralty had turned over the indorsed papers dealing with the naval stores imported from America by Sir Henry Ashurst and Sir Stephen Evans.[11] Before the year had passed letters were being exchanged regularly between the secretaries of the two boards. A slight misunderstanding, however, occurred in September. Secretary Popple of the Board of Trade had reported that he had experienced some difficulty in obtaining replies to his letters to the Admiralty Board, because the secretary of the Admiralty Board was of the opinion that the two ought to correspond through the Privy Council This opinion of the secretary was obviously not held by the Lords of the Admiralty for the matter was not taken up in a meeting of the Board, and correspondence between the two did not suffer any extended interruption.[12]

The relationship which existed between the Admiralty Board and the Navy Board was particularly close. The orders which the Navy Board received from the Lords of the Admiralty were both general and specific in nature, but, ordinarily, precise details were left to the discretion of the Navy Board. The formula used by the Admiralty Board in expressing its will to the Navy Board was "to desire and direct" that a thing be done. The Lords of the Admiralty constantly sought the advice of the Navy Board, and when their presence was deemed necessary the commissioners of the navy met with the Admiralty Board.

A study of the membership of the Board from 1689 to 1763 and the permanent clerical staff attached to it yields many valuable conclusions which may be summarized briefly. More than twenty-five commissions were issued, it being the practice to issue a commission each time a new First Lord was appointed. Many of the members during these years were of the worst

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[11] Fortescue, 29 July, 1696.
[12] Fortescue, August to December, 1696.

type, typical placemen of the century, weak in character and administrative ability, yet in practically every case there was at least one member of ability, usually the First Lord.

That there was not a complete lack of continuity in the work of the Board, chiefly because of the frequency with which commissions were issued, is explained in part by two significant facts. Several members, such as the Earl of Pembroke in the earlier years of the period and Sir Charles Wager and Lord Anson, later, were constantly reappointed. In these and like cases the total length of each member's service was considerable and such men because of their experience and ability tended to assume an all-important role in the deliberations and activities of the Board. In the second place, the chief member of the permanent staff attached to the Board was a secretary. Following the example and sound methods of Samuel Pepys who acted as secretary of the Admiralty Council before 1689, Josiah Burchett and Thomas Corbett filled this office in turn from 1698 to 1751. Their experience and ability gave them the importance of an extra commissioner. It may be added that the influence of the Privy Council and other agencies of government in naval affairs made for continuity in administrative practice and perhaps in the working out of policy.

II

The Establishment and Maintenance of Vice-Admiralty Courts

Probably the most interesting and instructive problem faced by the Admiralty Board after 1689 arose out of its efforts to exercise vice-admiralty powers in the colonies. The earliest vice-admiralty court in the American colonies appears to have been in existence in Jamaica by 1658. After 1660 this court was frequently mentioned. Such a court was referred to as existing in Barbados in 1662 although in the previous year efforts had been made to bring before the common-law courts cases which rightly belonged under admiralty jurisdiction.[1] In 1685, commissions were issued to a judge, register and marshal for a New England vice-admiralty court.[2] Doubtless these earlier courts did not exercise as wide a jurisdiction nor did they occupy as important a place in the colonial system as did those which were established after 1696.

It was customary to grant vice-admiralty powers to proprietary and corporate colonies in their charters. Royal governors were commissioned vice-admirals with power to exercise this authority in their own and, often, in adjoining colonies. Such commissions were granted by James, Duke of York, to Lord Willoughby for Barbados in 1667, to Sir Edmund Andros for New York in 1678 and to Governor Dongan for the same colony in 1682. Likewise, Joseph Dudley received such a commission for the Dominion of New England in 1685 and Andros for the same territory in 1686.[3]

In providing for vice-admirals in the colonies and defining the areas in which their authority should be exercised an English institution was extended to America. In England the coast was divided into vice-admiralty jurisdictions and a vice-admiral

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[1] Andrews, *Guide*, 90A, Vol. II, p. 35: Sainsbury, May, 1661, p. 29.
[2] Fortescue, 19 November, 1685, p. 119.
[3] Andrews, *Guide*, 90A, Vol. II, p. 35: *cf.* Jameson, J. F., *Privateering and Piracy.*

was the principal officer in each. There, however, each vice-admiral held a court in the chief port within his jurisdiction whereas in the colonies before 1696, few courts were actually established because the need for them did not arise. The powers granted to colonial vice-admirals exceeded those granted to like officers in England. Among other duties the most important exercised in England had to do with the seizure and condemnation of droits of the admiralty. Beyond this, however, they did not exercise judicial power for all the chief marine causes were brought to trial in the High Court of Admiralty. In the colonies, on the other hand, the vice-admiral was commissioned to exercise the usual powers of a vice-admiral and under certain conditions was granted the right to issue letters of marque and set up a court for the trial of admiralty causes. After 1696, other powers were added to these.[4]

Certain colonies opposed most strenuously the exercise of vice-admiralty powers and the erection of vice-admiralty courts within their borders. This was particularly true of the proprietary and corporate colonies who claimed that such courts were contrary to their charters unless they were established under colonial authority. The governors of other colonies, who had been commissioned vice-admirals, neglected to establish courts and failed to exercise the powers granted them. Only in the West Indies were vice-admiralty powers widely used. This general attitude of opposition or neglect continued until 1689 when significant changes occurred.

The outbreak of war had much to do with the increased interest in the establishment of colonial courts of vice-admiralty which manifested itself after 1689. It is true that by the end of the seventeenth century the long conflict between common-law and civil-law courts had resulted in a marked reduction in the power of admiralty courts. Although their earlier criminal jurisdiction was practically abolished and their civil jurisdiction was greatly diminished they still retained the right to try and

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[4] Marsden, R. G., Admiralty Droits and Salvage, *Law Quarterly Review*, Vol. XV, pp. 353–366: *Naval Records Society*, Vol. 50: *Adm.* 2.1045, 21 October, 1691. The vice-admiral should not be confused with the vice-admiral of the fleet. The latter was a naval officer.

adjudge prizes, pirates' effects and property seized as rights and perquisites of the admiralty.[5] Many cases which would rightly come under the jurisdiction of vice-admiralty courts arose in the colonies before 1689. Where courts existed, as in the case of certain islands in the West Indies, trial was held in America but more frequently cases were sent to England for trial in the High Court of Admiralty under whose jurisdiction the colonies were. Such an arrangement was based on the supposition that the number of admiralty cases arising in the colonies would be very small. Such indeed was true until the beginning of hostilities in 1689.

The beginning of the War of the League of Augsburg and the growing importance of colonial trade increased the number and importance of cases of which admiralty courts took cognizance. Many English privateers were commissioned and these made numerous captures on the high seas and in colonial waters. It was necessary to encourage them and increase their effectiveness by offering them a quick and convenient means whereby their prizes could be condemned. At the same time the Admiralty Board displayed a new interest in seizing and condemning rights and perquisites. Naturally, soon after the outbreak of war, several governors were commissioned as vice-admirals and, in some cases, vice-admiralty courts were set up.

In the latter part of 1689, Governor James Kendall of Barbados petitioned that he might be granted a commission as vice-admiral. Shortly thereafter a commission was issued to him and later to the governor of Jamaica.[6] These two commissions were issued by command of the King under the Great Seal.[7] The method of issuing vice-admiralty commissions was changed, however, before 1691. By an Act of Parliament all the powers customarily exercised by the Lord High Admiral were vested in the Admiralty Board.[8] In accordance with the spirit of this law the King issued a commission under the Great Seal

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[5] Holdsworth, *History of English Law*, third edition, Vol. 1, pp. 544, 568.
[6] Fortescue, 7 September, 1689, p. 142: *S. P. D. E. B.*, 204, 9 September, 1689.
[7] *S. P. D. E. B.*, 204, 9 September, and 25 November, 1689.
[8] 2 William and Mary, session 2, c.2, 1690.

conferring upon the Admiralty Board the right to issue commissions of vice-admiralty.[9] Several commissions were immediately issued out of the High Court under the admiralty seal.

In 1691, Governor Lionel Copley of Maryland petitioned that he might hold the office of vice-admiral in his colony. A commission was issued to him "in as large and ample a manner, as the same has been formerly granted to any other, or according to the usual form of letters Patent granted to the vice-admirals in England with power to . . . appoint his deputies and under officers (Judge, Register and Marshall . . . excepted.)" He was ordered to report annually to the Board concerning the exercise of his duties, otherwise his commission would lapse.[10] At the same time and upon his own request Sir William Phipps, governor of Massachusetts, received a similar commission. Somewhat later commissions were issued to Sir Edmund Andros for Virginia, Samuel Allen for New Hampshire and Benjamin Fletcher for New York, East and West Jersey, Pennsylvania and the "county of Newcastle."[11]

In August, 1692, the vice-admiralty commission held by Governor Beeston of Jamaica was examined by Sir Charles Hedges, Judge of the High Court of Admiralty. He found that Beeston's commission was unlike any other in force at the time and since it probably belonged to an "obsolete period" he recommended to the Board that a new one ought to be issued similar to others recently granted.[12] Accordingly, the Board issued a new commission to Beeston but unlike other commissions of about the same date he was allowed to appoint all minor officials.[13] Beeston objected seriously to this new commission, chiefly, because it was granted to him upon the authority of the Admiralty Board and not, like his former one, under the Great Seal. He further objected because his former power of commissioning privateers was not included. These complaints,

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[9] *Adm.* 2.1045, 21 October, 1691. *Cf. Adm.* 2.1045, 26 June, 1689, where the King in council conferred on the Admiralty Board the right to grant letters of marque. *Navy Records Society*, Vol. 50, p. 123.

[10] *Adm.* 2.1045, 21 October, 1691.

[11] *Adm.* 2.1045, 17 and 26 February, 1692.

[12] Fortescue, 24 August, 1692, p. 690.

[13] *Adm.* 2.1045, 7 September, 1692.

submitted to the Privy Council, were referred to the Lords of the Admiralty, who explained and defended their action.[14] They showed that the commission they had issued was legal and similar to those issued to other colonial governors. In their opinion Beeston was requesting too much power and since neither he nor his predecessors had exercised legally the right of commissioning privateers, they did not propose to grant it to him. During the following year additional commissions were issued to colonial governors and it became the practice to allow them to appoint all minor vice-admiralty officers without exception.[15]

The necessities of war kept the question of vice-admiralty courts before the Admiralty Board. This was particularly true in regard to prizes since many were being taken and there was a pressing need that they might be condemned close to the place of capture and as speedily as possible. There is a suggestion in the records that, in 1693, the Admiralty Board planned to set up vice-admiralty courts throughout the colonies for the express purpose of trying prizes.[16] In the mainland colonies it was understood that vice-admirals, properly commissioned, possessed the right to constitute courts and try prize cases. Admiralty courts in the West Indies had formerly acted as prize courts and Governor Beeston of Jamaica claimed this right for his court yet, for some reason, the Board had denied it.[17] The Admiralty Board took steps to clear up the question by recommending to the Privy Council that the right to condemn prizes be granted specifically to the Jamaica court. Accordingly, letters patent under the Great Seal were issued to the Admiralty Board conferring upon it the right to grant to the vice-admiralty court in Jamaica jurisdiction over prizes. It was provided that all "captures, seizures, prizes and reprizalls" of goods and ships between the Island of Fayal and the American continent and in

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[14] Fortescue, September, 1692: *Adm.* 1.5142, 29 September, 1692: Fortescue, 12 October, 1692, p. 721.

[15] *Adm.* 2.1045, 7 March and 11 June, 1693, 19 February, 1694: *Md. Archives*, Vol. 20, pp. 114–5.

[16] *L. J.*, Vol. XVIII, p. 410: Fortescue, 7 June, 1693.

[17] *Md. Archives*, Council, Vol. 20, pp. 114–15, 28 July, 1694: Fortescue, 12 October, 1692, p. 721.

all colonial waters should be subject to the jurisdiction of the Jamaica court.[18]

The result of the Admiralty Board's interest in colonial vice-admiralty problems before the year 1696 was not great. Many vice-admirals had been commissioned though, contrary to the opinion of the Board, they did not necessarily set up courts. In the mainland colonies, however, courts had been constituted by a few governors, notably in New York and Maryland.[19] The procedure followed in these cases was not always the same and as late as October, 1695, this fact was called to the attention of the Board by Governor Fletcher.[20] In the West Indies, on the other hand, courts had been more consistently established chiefly because the need for them was greater.[21] Furthermore it appears that there was in the West Indies no great antagonism to the procedure followed in vice-admiralty courts. Yet in the West Indies, as was true in the colonies to the northward, uniformity in vice-admiralty matters did not exist and as late as 1695 prizes brought to Barbados were condemned in a court that had not been legally set up.[22]

The Act of Trade of 1696 created a further interest in colonial courts of vice-admiralty and gave them an increased importance.[23] This Act was designed to correct the abuses which had been practiced in trade and although vexingly ambiguous language was used it granted colonial vice-admiralty courts concurrent jurisdiction with common-law courts in respect to breaches of the law. At the same time the Board of Trade was established and for several years it actively endeavored to stamp out all irregularities and bring the colonies under an efficient, centralized control. One of its most successful efforts was in assisting in the

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[18] *Adm.* 2.1046, 4 May, 1694: See, also, *Navy Records Society*, Vol. 50, pp. 161–2.

[19] *Md. Archives*, Council, Vol. 20, pp. 114–15: *Camb. Hist. Br. Empire*, Vol. I, p. 295.

[20] *N. Y. Col. Doc.*, Vol. IV, p. 112: *Adm.* 2.1046, 2 October, 1695. The Admiralty Board empowered Governor Fletcher and Governor Nicholson of Maryland to appoint all minor vice-admiralty officials, "notwithstanding any former order to the contrary."

[21] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 2, paragraph 1115.

[22] Fortescue, 30 May, 1695, p. 494.

[23] 7 and 8 William III, c.22, 1696.

establishment of vice-admiralty courts as an integral part of the colonial system.

The general opinion held in the colonies, the West Indies excepted, was that cases arising out of breaches of the Acts of Trade ought to be tried before juries in common-law courts. Much illegal trade was carried on and although there were some convictions before juries it was more frequently true that offenders were acquitted. Zealous officers and those who wished to see the laws enforced much preferred to institute proceedings, in such cases, in vice-admiralty courts which were civil-law courts and in which the judge, without a jury, heard the case, determined the guilt and assessed the penalty. That such cases might be brought before the judge of a vice-admiralty court "at the pleasure of the officer and informer" was provided in the Act of 1696. It is evident that the chief reason the colonists opposed the vice-admiralty courts was the fact that convictions could be obtained in them by the law officers of the Crown.[24] That the Admiralty Board was not as successful in defending the powers of the courts as the colonists were in nullifying them will appear subsequently.

Many colonial officials had urged that something be done to check illegal trade and numerous suggestions had been made as to the proper means to be adopted. One of the most zealous of these officials was Edward Randolph who arrived in England in December, 1696, for the purpose of urging that steps be taken to support the authority of the King in the colonies.[25] Before Randolph arrived in England, however, the Commissioners of Customs who were vitally concerned with trade in the colonies had made the first move for the effective establishment of vice-admiralty courts in the colonies.[26] They expressed to the Treasury Board the firm conviction that if the Acts of Trade were to be enforced vice-admiralty courts would have to be erected in the colonies and trustworthy persons ought to be appointed as officers. Furthermore, they pointed out with

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[24] *Cf. Camb. Hist. Br. Emp.*, Vol. I, p. 295.
[25] *Camb. Hist. Br. Empire*, Vol. I, p. 296.
[26] *Adm.* 1.5146, 23 July, 1696.

special care that these courts and their officers should be kept wholly under royal control. These proposals were submitted by the Lords of the Treasury to the Privy Council who in turn ordered that an opinion should be given by the Admiralty Board. The Lords of the Admiralty were inclined to defend the arrangements which already existed. They stated that many commissions had been issued to governors for the exercise of vice-admiralty powers but apparently they failed to comprehend that all these governors had not established vice-admiralty courts.[27]

The details of the report of the Admiralty Board caused the Privy Council to issue three important orders. By the first of these it was provided that a commission as vice-admiral should be issued to every governor who requested it.[28] In the second place, it appeared clear that no proprietary or corporate colony had erected a vice-admiralty court under the authority of the Admiralty Board. The Privy Council directed the Attorney-general to give his opinion as to the power of the Crown to establish courts in these colonies.[29] Finally, in December, the Council directed the Admiralty Board to issue orders necessary to insure the automatic transfer of admiralty powers in the colonies from each retiring or deceased governor to his successor.[30] In the meantime the Attorney-general had prepared his report and, after reading the several proprietary and corporate charters, he was of the opinion that there was nothing to prevent the establishment of vice-admiralty courts in these colonies. The only necessary procedure was to issue the proper commissions.[31]

While the steps just described were being taken the Privy Council was seeking the advice of the Board of Trade. The members of this board were active in discovering every avail-

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[27] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 2, paragraph 1115. The opinion of the Admiralty Board was submitted on November 19, 1696.
[28] Fortescue, 19 November, 1696, p. 218.
[29] Fortescue, 21 November, 1696.
[30] *Adm.* 1.5146, 3 December, 1696.
[31] Fortescue, 4 December, 1696, p. 238: Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 2, paragraph 1115.

able fact which might throw light on the matter. They conferred with Edward Randolph and sought information from other departments of government. In not less than two reports to the Privy Council, before the end of the year, they threw the whole weight of their influence on the side of the Commissioners of Customs and recommended the establishment of an adequate number of vice-admiralty courts in the colonies. Moreover, the Board of Trade submitted a complete report to the House of Lords.[32]

The proprietary and corporate colonies presented a special difficulty for it was definitely learned that they proposed to prevent, if possible, the establishment of vice-admiralty courts within their boundaries. In fact this was an extremely critical period for these colonies and they were determined to preserve all their rights and privileges. The proprietors and agents of most of the proprietary and corporate colonies appeared before a committee of the House of Lords in the early part of 1697. They argued that courts of vice-admiralty, commissioned under the admiralty seal, were contrary to the provisions of their charters. They pointed out that such courts had not been erected by colonial authority because of the expense and because all cases had been properly handled in common-law courts but they pledged themselves, as they had previously done, to establish vice-admiralty courts under their charters if they should be so directed.[33]

In spite of all pleas to the contrary the original proposals of the Commissioners of Customs, augmented by the recommendations of the Board of Trade, were accepted and the Privy Council resolved upon the establishment of colonial vice-admiralty courts. The Board of Trade assisted by the Commissioners of Customs and Edward Randolph submitted a list of officials for the courts and the Admiralty Board, by proper warrant, was authorised to issue the commissions.[34] By May, 1697, plans had been completed and appointments were prepared for judges,

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[32] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 2, paragraph 1115.
[33] Fortescue, 16 December, 1696.
[34] Fortescue, 24 February, 1697, p. 382.

registers, marshals and advocates of the courts. Eight vice-admiralty jurisdictions or areas were defined, including the West Indies and the colonies to the northward.[35] In each jurisdiction a governor was commissioned as vice-admiral with the power to erect a court. To prevent any lapse or failure in justice the successor of each of these governors should exercise vice-admiralty powers. When vacancies occurred they were to be filled immediately by the vice-admiral and the names of those appointed were to be forwarded to England for the approval of the Admiralty Board. In addition to the three vice-admiralty jurisdictions of Jamaica, Barbados and the Leeward Islands in which courts already existed, the governor of Massachusetts was commissioned as vice-admiral for Massachusetts, Rhode Island and New Hampshire, the governor of New York for New York, Connecticut and East Jersey, the governor of Maryland for Maryland, Pennsylvania and West Jersey, the governor of Virginia for Virginia, Carolina and the Bahama Islands and the governor of the Bermuda Islands for the Bermudas. The colonies constituting each vice-admiralty jurisdiction were changed frequently in subsequent years but the courts remained a permanent colonial institution.

In an effort to make more secure the position of the courts upon their establishment the King sent very pointed letters to colonial governors. They were urged to cooperate with the officers of the courts in putting an end to illegal trade. Rhode Island and Connecticut were notified that their attitude toward the court and illegal trade was well understood and to persist in it would lead to the forfeiture of their charters. Royal governors were warned that failure to cooperate would mean removal. The Jersey proprietors were informed that they would displease their sovereign if they failed to assist the courts and if he failed William Penn was told he would forfeit his patent.[36]

Almost as soon as the vice-admiralty courts were set up it became evident that to maintain their authority would be a task of the greatest magnitude. In the West Indies, where the

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[35] *Adm.* 2.1047, 28 May, 1697.
[36] Fortescue, 22 April, 1697, pp. 458–9.

courts had long existed and where their usual marine jurisdiction was of great importance, little trouble was experienced. In the colonies on the mainland, however, numerous difficulties arose and problems of varied nature had to be solved. The principal difficulty arose out of the general colonial attitude of antagonism to the courts.

Opposition to the courts, once they were established, was not unified but on the other hand, different colonies opposed them for different reasons and at different times as the occasion arose. In spite of this it may be stated with a great degree of accuracy that the proprietary and corporate colonies were the first to display violent opposition and in doing this they harassed the courts and refused to use or obey them, all the while pleading that they were legally justified by the terms of their charters. The royal colonies were slower to act since they were not protected by charters. After several expedients were tried, however, they found an effective legal means whereby the power of the courts was nullified.

There can be no doubt that the Admiralty Board, as well as other governmental boards, was aware of the conditions which existed. The sentiment in the colonies concerning vice-admiralty courts was a common topic in the letters and reports of colonial officials, and perhaps the three persons who most earnestly pointed this out were Edward Randolph, Surveyor-general of the Customs in North America, Governor Bellomont of New York and Robert Quary, judge of the vice-admiralty court in Pennsylvania and later successor to Randolph as Surveyor-general. These three men were zealous in their efforts to enforce the law and because of this they experienced the full force of colonial feeling.

As soon as a court was established in Pennsylvania a violent controversy arose between Quary, who had been named as judge, and the proprietor. This controversy dragged on for several years and in the course of it Quary sent many reports to England, some of which were addressed to the Admiralty Board. No effective support from England was given him in the course of this struggle.[37]

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[37] This controversy can be traced in Fortescue and Headlam.

In the meantime great difficulty was experienced in Rhode Island. Peleg Sandford, who had been appointed judge, was forbidden by the governor to set up a court for it was contended that this would be an encroachment upon the charter rights of the colony.[38] Thereafter, evidence against Rhode Island relating to illegal trade and its attitude toward vice-admiralty courts accumulated. Finally, in 1698, the Board of Trade made a report to the Privy Council concerning illegal trade in the colonies and a strong case was made against Rhode Island.[39] As a result of this Governor Bellomont of New York was sent to Rhode Island to make a special inquiry. His report made it clear that Rhode Island refused to accept the jurisdiction of vice-admiralty courts established by the authority of the Admiralty Board.[40]

More than a year later the Admiralty Board acted upon a recommendation which Governor Bellomont had made and it appeared that this was done in an effort to meet the situation in New England. Two vice-admiralty judges were appointed for all the colonies of New England, New York and the two Jersies. Later, however, this arrangement was dropped and the governor of Massachusetts was commissioned vice-admiral with jurisdiction over all New England except Connecticut. The latter colony was included in the vice-admiralty jurisdiction of the governor of New York.[41]

Doubtless in these years of preparation for war and in the War of the Spanish Succession which followed, the Admiralty Board found little time for the consideration of colonial problems. As a result the Board of Trade was called upon to act in numerous instances. Reports were slow in reaching England but the Board of Trade learned, in 1701, that the opposition to vice-admiralty courts in South Carolina was intense. Joseph Morton, the judge, was powerless and he was accused of a breach

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[38] *Rhode Island Col. Records*, Vol. 3, 31 January, 1698.
[39] Fortescue, 21 December, 1698, p. 581.
[40] *Rhode Island Col. Records*, Vol. 3, 27 November, 1699: Headlam, 27 November, 1699, p. 542.
[41] *Adm.* 1.5147, 6 March, 1701: *Adm.* 2.1048, 5 July, and 29 September, 1701.

of trust because he accepted his appointment from the Admiralty Board. Later, Morton complained about a particular law which had been passed by the colonial assembly. It provided that officers of the vice-admiralty court would be held liable for their official acts and that all trials in the vice-admiralty court must be held before a jury. Dr. Newton, Advocate of the High Court of Admiralty, protested vigorously against this act and it was disallowed.[42] Connecticut as well as Rhode Island continued in open opposition to vice-admiralty authority. Rhode Island had gone so far as to create a special court of vice-admiralty and in doing this refused to be governed by orders coming from the Admiralty Board.[43] The Board of Trade recommended that the charter of Rhode Island should be withdrawn and the Attorney-general, Sir Edward Northey, gave as his opinion that the Rhode Island admiralty court was illegal and that the charter could be annulled at the pleasure of the Queen. The only result of this action was that the Queen sent a special letter to Rhode Island and a general one to the proprietary and corporate colonies. The Rhode Island court was declared illegal and the colonies addressed were directed to abide by the law in all vice-admiralty matters and obey all instructions issued by the Lord High Admiral. At the same time the Lord High Admiral was directed to send additional instructions to these colonies.[44]

Before the question of Rhode Island's illegal actions was closed for the time by the Queen's letter two other questions arose to which attention was given. There was great uncertainty as to whether governors exercised vice-admiralty powers by virtue of their commissions as governors under the Great Seal or by the special commissions issued out of the High Court under the admiralty seal. The answer to this question was sought, primarily, in order that it might be determined whether appeals from colonial vice-admiralty courts lay in the Privy Council or in the High Court of Admiralty. Upon the direction of the Privy Council the Board of Trade sent letters to colonial

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[42] Headlam, 29 August, 1701, pp. 487–8, 29 January, 1702, p. 55.
[43] Headlam, 13 January, 1704, p. 9.
[44] Headlam, 26 and 28 January, 6 February, 31 May, 1704.

vice-admirals requiring that they explain from whom they held their commissions.[45] In the replies which were received it was shown that vice-admiralty powers in the colonies were exercised by virtue of commissions under the admiralty seal.[46] In its report, however, the Board of Trade explained that in the past some appeals had been heard before the Privy Council.[47] Thereupon the Lord High Admiral was directed to instruct all colonial vice-admirals that appeals should lie in the High Court of Admiralty.[48] Later, the Attorney-general ruled that in all cases where courts of vice-admiralty were constituted under letters patent issued by the authority of the Admiralty Board appeals should be made to the High Court of Admiralty.[49]

While the question of appeals was being settled the second problem which caused great uncertainty was being considered. This had to do with the jurisdiction of vice-admiralty courts in cases arising out of breaches of the Acts of Trade and it was the ambiguity of the Act of 1696 which caused the uncertainty. The Attorney-general, the Solicitor-general, the Queen's Advocate and the Solicitor of the Treasury Board were consulted and their opinions reveal clearly the different aspects of the problem. In general they stated that no governor, whether he was of a proprietary, corporate or royal colony, could legally hold his office unless he took an oath to enforce the Act of Trade of 1696. It was their opinion, further, that although the vice-admiralty courts did not possess exclusive jurisdiction over causes relating to breaches of the Act of Trade yet they possessed concurrent jurisdiction. According to the law it was the right of the informer to choose the court in which a trial would be instituted. Finally, it was their opinion that when a suit was begun in one court it could not be transferred to another or tried by another. Furthermore, when a suit had been settled it could not be retried save by an appeal to the proper court.[50]

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[45] Headlam, 18 December, 1701.

[46] *Md. Archives*, Assembly, Vol. 25, 25 January, 1702: Rawlinson Mss., C., 128, folio 141, 23 July, 1702: Headlam, 29 September, 1702, p. 262.

[47] Headlam, 7 July, 1703, p. 540.

[48] Headlam, 28 January, 1704.

[49] Chalmers, *Opinions*, Vol. 2, p. 227. See also the opinion of Sir John Cooke, Headlam, 13 June, 1702.

[50] Headlam, 11 and 13 June, 7 July, 21 August, 1702.

This opinion of the principal law officers of the Crown was a clear reflection of the problems which confronted the vice-admiralty courts at this time. Certain governors of proprietary and corporate colonies had avoided taking the oath prescribed in the Act of 1696 and in the same spirit had felt justified in preventing the establishment of vice-admiralty courts. In several colonies, cases arising out of illegal trade had been taken out of vice-admiralty courts after trial had begun or had been retried in common-law courts. Invariably the purpose of such action was to gain an acquittal for the illegal trader. Finally, there was a wide divergence between the extreme colonial point of view and the extreme view held in England. Colonial opinion was that cases relating to trade must be tried before a jury, even in a vice-admiralty court, whereas it was hoped in England that an exclusive jurisdiction in such cases could be established for the court. That the law admitted of neither interpretation is evident from the legal opinion that was given.

During the first ten years in the history of the vice-admiralty courts colonial opposition had been varied in its expression and effectiveness. They had been hindered, their officers harassed and as far as possible the colonists had avoided using them but no sure way had been found whereby their powers could be legally nullified. The Admiralty Board, in these years, was weak and heavily burdened with the problems of war and consequently had done little to strengthen the courts. In fact, it appears that the Board had done almost nothing beyond sustaining the maritime powers of the courts relative to the trial and condemnation of prizes, pirates' effects and rights and perquisities of the admiralty. Just when the War of the Spanish Succession was coming to a close and when it might have been expected that the Board would be able to give careful consideration to the problem of the courts, Massachusetts had recourse to an effective, legal means whereby their power was reduced and in some cases destroyed.

Opposition in Massachusetts to the courts had not been particularly noticeable immediately after their establishment but by the year, 1706, the Board of Trade in its reports, had begun to find conditions there comparable to those in Connecticut and

Rhode Island.[51] In that year the attitude of Massachusetts was still more clearly revealed. A whale was cast up on the shore near Barnstable and Governor Dudley ordered suit for its condemnation as a droit of the admiralty to be instituted in the vice-admiralty court. Before this could be done, however, the inferior court of common pleas in Barnstable seized the whale, tried the case and made an award. Dudley pointed out in a letter to the Board of Trade that he had done all in his power to correct the error for he realized the danger to the court of vice-admiralty which was involved in this action. He stated that he would dismiss the offending court if it was considered that he possessed the power.[52] The Board of Trade referred Dudley's letter to Sir John Cooke of Doctors' Commons. He considered that the action of the justice in Massachusetts was irregular, invasive of admiralty rights and contrary to his duty, for all civil magistrates were obliged to assist admiralty officers. He believed that a proper solution of the problem lay in an appeal to England unless, as he seemed to doubt, a letter to the colony would be effective.[53]

The case reported by Dudley was, as Sir John Cooke pointed out, a clear example of infringement but in 1712 the Admiralty Board was notified that the Superior Court of Massachusetts had been applied to for a writ of prohibition to stay a trial in the vice-admiralty court.[54] Earlier than this, writs of prohibition had been mentioned in the colonies and perhaps, after a fashion, they had been used.[55] This was the first case, however, which was brought directly to the attention of the Board, and in taking this action the colonists had seized upon a means of limiting the power of the vice-admiralty courts which had been judged legal in England and which had been used successfully.

Writs of prohibition had been used in England as a useful

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[51] *Rhode Island Col. Records*, Vol. 4, 10 January, 1706: *Treas.* 64.89, 22 February, 1706.
[52] Headlam, 1 February, 1706, pp. 29–30.
[53] Headlam, 21 March, 1707, p. 397.
[54] *Adm.* 1.3668, 27 March and 5 August, 1712.
[55] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 2, paragraph 1151, Robert Quary to the Adm. Bd., 4 November, 1700.

weapon in the hands of the common-law courts in the course of their long struggle with the civil-law courts. This struggle had begun before the Tudor period. Civil-law courts, of which the admiralty was one, were viewed with disfavor and even dread because in addition to acquiring vast powers they proceeded in the trial of cases without juries. During the Tudor period, when the common-law courts were being encroached upon from many quarters, they began actively to resist and extend their powers. In doing this they struck boldly at the admiralty courts and were able to reduce materially their jurisdiction. This attack was effective chiefly because the common-law courts were able, under the terms of existing laws, to restrain the admiralty courts with writs of prohibition.

A writ of prohibition was a legal instrument directed by a common-law court to the judge and parties to a suit in an inferior court commanding them to cease trial "upon a suggestion that either the cause originally, or some collateral matter arising therein does not belong to that jurisdiction."[56] In the early part of the sixteenth century these writs were often disregarded by the civil-law courts and in the struggle the High Court of Admiralty frequently took the offensive in the matter by means of a process of contempt against "those who brought proceedings upon maritime causes in another court."[57] But the civil-law courts fought a losing fight, because the writ of prohibition in the hands of the common law proved to be effective. By the end of the seventeenth century the civil jurisdiction of the High Court of Admiralty was greatly reduced and especially its commercial jurisdiction was transferred to common-law courts.[58] This reduction of admiralty jurisdiction in England had been accomplished before the jurisdiction of vice-admiralty courts in the colonies was made by law to include breaches of the Acts of Trade. In having recourse to writs of prohibition to destroy the courts of vice-admiralty the colonists were using the same means which had been used successfully in England.

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[56] Holdsworth, *History of English Law*, Third Edition, Vol. 1, p. 228.
[57] *Ibid.*, p. 553.
[58] *Ibid.*, pp. 544–559, 228–9, 202–3.

As has been mentioned, the first writ of prohibition brought in Massachusetts by the Superior Court was reported to the Admiralty Board in 1712. The Massachusetts Superior Court, to which application was made, was not prepared to act immediately. The importance of the matter was understood and the court continued its deliberations for some time ordering, however, that action in the vice-admiralty court should be stayed. The prohibition was finally granted. In the meantime the judge of the vice-admiralty court reported the whole matter to the Admiralty Board and pleaded for assistance. The Board considered the case and sought the opinion of the Advocates of the High Court of Admiralty. In their opinion the whole affair was fraught with great moment and they suggested that it might best be settled if an appeal were carried from Massachusetts to the High Court. Governor Dudley, as vice-admiral, exercised his discretion and, since it appears that in this case he favored the prohibition, the matter was not carried beyond the Massachusetts Superior Court.[59]

By the end of 1716, another prohibition had been brought in Massachusetts and, shortly thereafter, one in New Hampshire. The Admiralty Board referred the matter to Sir Henry Penrice, Judge of the High Court of Admiralty, for his opinion. He stated that he assumed the judge and vice-admiralty court possessed no greater power in Massachusetts than the High Court of Admiralty possessed in England save as the colonial court had been expressly granted powers by an Act of Parliament. Under similar circumstances in England, writs of prohibition would be legal. Since the terms of an Act of Parliament did not interfere the writ of prohibition was legal in Massachusetts.[60]

The writ of prohibition in New Hampshire and an additional one in Massachusetts were reported to the Admiralty Board in 1717. Again the opinion of Sir Henry Penrice was sought. In this reply he noted, rather pointedly, that his former opinion had not been sent by the Board to vice-admiralty officers in New England. In view of these encroachments upon the courts,

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[59] *Adm.* 1.3668, 27 March, 5 and 13 August, 1712, 22 April, 1713.
[60] *Adm.* 1.3669, 10 November, 1716.

which he held were legal, he suggested that the governor of Massachusetts, as vice-admiral, should send a complete report of the matter to a principal Secretary of State in order that it might be placed before the Privy Council. This body, in his opinion, could put an end to all uncertainty by naming the proper jurisdiction of each colonial court. A letter directing the governor of Massachusetts to proceed upon the suggestion of Sir Henry Penrice was ordered by the Board.[61]

Without waiting for the governor to forward a report to England the Admiralty Board placed the whole matter before the King in Council by a statement describing the conditions which existed in Massachusetts. The Superior Court in Massachusetts had encroached upon admiralty jurisdiction, the Board reported, by ordering persons set at liberty who had been imprisoned by the vice-admiralty court, by issuing writs of prohibition in restraint of trial and appeal to the High Court of Admiralty and by fining persons who brought suit in the court. The governor of Massachusetts had been unable to offer redress. Complaints, describing similar conditions in other colonies, had been received by the Board and consequently it was of the opinion that there was little or no regard for the admiralty jurisdiction in the colonies. The Board's suggested solution of the problem was that the King send letters to all governors in the colonies ordering them not only to cease to hinder but to lend active aid to the vice-admiralty courts.[62]

The Privy Council, possessed of the information which the Admiralty Board had furnished, sought the opinion of a law officer of the Crown. In 1721, the King's Advocate, Sir Richard West, returned an opinion which showed that he was in sympathy with the common-law point of view.[63] In his opinion, the reports which had come from the colonies showed ". . . the desire, which the admiralty judges have of extending their jurisdiction." It was only natural, West held, that prohibitions were issued in New England, for the English common law extended there and it had always been jealous of encroachments and had fought

[61] *Adm.* 1.3669, 8 May, 12 September, 21 October, 1717.
[62] *C. O.* 327, 3 January, 1718.
[63] Chalmers, *Opinions*, Vol. 2, pp. 207–215.

them by prohibitions. If prohibitions were not granted in New England, the vice-admiralty courts might destroy some of the most sacred rights of British subjects. As to a remedy, West believed the King could order governors to support vice-admiralty courts but he could not order common-law courts to cease to grant a writ which was known to be strictly legal. Therefore he saw only one sure remedy. If it should be found "as in all probability, the fact, as to New England, is, that the people there, do, under pretense of law, attempt to disturb, and, perhaps, to banish, from that province, the due exercise of an admiralty jurisdiction, I am humbly of opinion, that the properest remedy the admiralty can apply for, is, that a bill may be brought into Parliament . . . by which . . . the exercise of the admiralty jurisdiction, for the future, may be established and reduced to a certainty."[64]

The remedy which West suggested as the truly effective one was not applied. Letters to governors, as ever, proved to be an ineffective means of correcting abuses and within the limits laid down by West such letters could possess little more than negative value. Although the Admiralty Board did not display great energy in an effort to solve the chief problems connected with the colonial courts it did continue to consider vice-admiralty problems. While the question of prohibitions was being considered the Board investigated the failure of vice-admirals to make the required annual report. In addition, the qualifications of officers named to fill vacancies were carefully examined.[65]

When, in 1718, it appeared that hostilities might break out with Spain the Admiralty Board endeavored to insure the proper exercise of all wartime functions on the part of the colonial courts. Sir Henry Penrice ruled that in the case of prizes being taken and brought to the colonies the courts of vice-admiralty alone possessed jurisdiction over them.[66] Immediately thereafter the Board drew up complete instructions to guide procedure in the condemnation of prizes, and these were sent to all

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[64] *Ibid.*, pp. 214–5.
[65] *Adm.* 1.3669, 12 January, 1718: *Adm.* 3.31, 20 August, 1718.
[66] *Adm.* 1.3669: *Adm.* 3.31, 17 December, 1718.

vice-admirals.[67] At the same time instructions concerning letters of marque were issued.[68] In 1719, the Board was forced to consider the actions of Governor Shute of Massachusetts. He had shown a disposition to interfere with the vice-admiralty court in condemning droits of the admiralty and in the case of a prize that had been taken. He was reminded that his action had been irregular and the Board notified him that he was not to interfere either as governor or as vice-admiral.[69] Somewhat later the Board was notified that the governor of Jamaica had suspended the officers of the vice-admiralty court without transmitting his reasons and a full account of the affair to England. He was ordered to restore the suspended officers until the case could be examined in England.[70]

In 1722, further serious disturbances over vice-admiralty courts broke out in New England. This renewed antagonism which involved the whole question of the maintenance of an admiralty jurisdiction, especially in Massachusetts and Rhode Island, was composed of two different elements. On the one hand the hostile feeling against the authority and procedure of the court was renewed and deepened because Judge Menzies proved to be a man of courage. His efforts, in some measure, precipitated a crisis and before many years had passed his failure made it evident that the Admiralty Board was unable to support the officers and sustain the vice-admiralty courts. On the other hand, the characteristic New England attitude was intensified because of the struggle over the preservation of the woods. It will be necessary to explain briefly how this entered into the renewed attack upon the courts in 1722.

Before 1722, the efforts which had been made by the British government to preserve the best trees in the New England woods for the royal navy had been a failure. The people of New England had found it to their advantage to use the trees for other purposes and they relied upon technicalities in the law to pro-

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[67] *Adm.* 2.1052, 3 January, 1717.
[68] *S. P. D. E. B., Naval*, 218.
[69] *Adm.* 2.1052, 2 September, 1719: *Adm.* 3.32, 3 September, 1719.
[70] *Adm.* 3.35, 12 March, 1725.

tect themselves. The laws which had been passed by Parliament concerning the woods in New England provided that cases which arose should be brought before the nearest common-law officer.[71] Officers of the woods and others found that under these provisions they were powerless to prevent waste.

By 1721, it was clear that efforts to preserve the woods had failed. In that year, however, another law was passed which provided that after September 21, 1722, the colonial courts of vice-admiralty should possess an exclusive jurisdiction in all cases arising out of illegal cutting of trees.[72] This grant of additional power to the courts only served to make more bitter the feeling in New England. The law was not successfully enforced and the court, already burdened and struggling, suffered a further loss of prestige and power.

In 1722, then, a most serious condition existed. Judge Menzies and Governor Shute of Massachusetts had endeavored to exercise vice-admiralty powers in Rhode Island. They had proceeded legally but Rhode Island denied the jurisdiction of any admiralty court save one erected under its own charter. When the Lords of the Admiralty were notified of what had occurred they placed the whole matter before Sir Henry Penrice and requested his opinion. He recommended an appeal to the High Court of Admiralty where the matter could be settled definitely.[73] The Admiralty Board, apparently, deemed this suggestion unwise for almost immediately it appealed to the Privy Council with a complete statement of the case. The Council, after considering the case, ordered Rhode Island to submit to the vice-admiralty court in the case under consideration and, in the future, to observe the decrees of the court. Furthermore, the colony was ordered to lay no claim whatsoever to an admiralty jurisdiction of its own.[74] That Rhode Island was not permanently influenced by this Order in Council is apparent, for upon the death of

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[71] 3 and 4 Anne, c.10: 9 Anne, c.17: 12 Anne, c.9.
[72] 8 George I, c.12.
[73] *Adm.* 1.3670, 12 and 13 June, 1722.
[74] *Adm.* 7.339, 2 August, 1722: *A. P. C., Colonial*, Vol. 3, 7 August, 1722: *Adm.* 7.339, 5 December, 1722.

Menzies the assembly chose a judge and the governor commissioned him to try admiralty cases in the colony.

As might have been expected, both Menzies and Shute experienced the most bitter opposition in Massachusetts. A ship, trading illegally, was seized, and the case was brought before the vice-admiralty court before a writ of prohibition could be issued. A mob gathered, mistreated witnesses and intimidated certain officers of the court.[75] In reporting this case Menzies pleaded for aid from England in order that the authority of the court and the dignity of the King's service might be preserved. The only action the Admiralty Board took was to forward copies of the report to the Secretary of State for the Southern Department. The neglect displayed by the Admiralty Board stirred the Commissioners of Customs who saw the customs receipts diminishing on account of the failure of the courts to check illegal trade. In a letter to the Board, in 1726, they recounted the events of the previous years in New England and asked what had been done and what ought to be done to support the vice-admiralty jurisdiction.[76]

The Admiralty Board could not remain wholly inactive and again sought legal advice. The Attorney-general and the Judge of the High Court of Admiralty were applied to for their opinions. The Attorney-general found that the colonial common-law courts had successfully hindered the vice-admiralty courts by injunctions and prohibitions and as a result customs officers and others had ceased to bring suits because convictions were impossible. Furthermore, the vice-admiralty courts were generally in great disrepute. His suggested remedy was that an exclusive jurisdiction should be created for the vice-admiralty courts "in all cases arising upon the Laws concerning the Customs, Trade, and Navigation."[77]

Sir Henry Penrice, after noting that he had already given several opinions, continued by stating, "I have not had the Honour to be acquainted with any steps that have been taken by

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[75] *S. P. D., Naval*, 181, January, 1724: *Adm.* 3.35, 1 April, 1724.
[76] *Adm.* 1.3685, 16 March, 1726.
[77] *Adm.* 1.3672, 10 August, 1726.

My Lds Commissioners of the Admiralty towards preventing the Encroachments of the provincial Judges." He was still of the opinion that an Order in Council was the proper legal method of determining the jurisdiction of each colonial court.[78]

While events in New England were running their course the opposition to vice-admiralty courts in other colonies became intense. Pennsylvania and the Carolinas had early displayed great hostility toward the courts and their general attitude did not change as time went on.[79] Just after 1722, when the feeling in New England was most bitter a similar attitude was displayed by the people of South Carolina. In 1723, a customs officer reported that he had seized a ship engaged in illegal trade and had endeavored to have it condemned in the vice-admiralty court. The provincial court issued a writ of prohibition and he resolved to disregard it, but in this he was unsuccessful.[80]

In the same year the Board learned that the judge of the vice-admiralty court in South Carolina had been deprived of his office, fined and thrown into prison. Sir Henry Penrice, to whom this matter was referred, returned the same opinion concerning the court in South Carolina that he had given relative to the court in Massachusetts. He believed that an Order in Council would be an effective means of defining an exclusive vice-admiralty jurisdiction. He urged with great force, at this time, that remedial action should be taken that would include all the colonies. He added, "The Judges at Common Law take all advantages of the Admiralty Jurisdiction in distress, they Ply it hard with prohibitions, and seem resolved to sink it quite . . . Their Lordships . . . Powerful and timely Influence may yet keep it afloat."[81]

After this opinion had been received the Board appealed to the Privy Council. It was the Board's opinion that in all the colonies, as well as in South Carolina, the vice-admiralty courts were being encroached upon to such an extent that if something

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[78] *Adm.* 1.3672, 2 May, 1727.
[79] Headlam, 3 February, 1709, p. 61: *Adm.* 2.48, 24 May, 1716: Rawlinson Mss., C. 385, 13 June, 1717.
[80] *S. P. D. E. B., Secretary Letters*, 123, 2 March, 1723.
[81] *Adm.* 1.3671, 30 August, 1723.

were not done they would be destroyed.[82] After consideration, the Privy Council sent strict instructions to all colonial governors to assist vice-admiralty officers in the discharge of their duties.[83]

In 1724 and in subsequent years, encroachments upon the vice-admiralty courts continued in South Carolina as was also the case in New England. The South Carolina situation was full of disturbing factors and the Board, feeling unable to change conditions single handed, continued to send out appeals to others. Sir Henry Penrice continued, consistently, to give advice which was never followed and which, doubtless, would have been unsuccessful had it been followed. When the Board appealed to a Secretary of State in the following words, "you will please to communicate to his Majesty for if some effectual stop be not put to such irregular proceedings, there will be a total stop to the authority of the said courts of admiralty abroad, to the great prejudice of his Majesty's service . . .," no definite action was taken.[84] Appeals to the Privy Council brought additional letters which produced no marked results.[85]

By the year 1730, it was clear that the example of New England and South Carolina in refusing to accept the authority of the vice-admiralty courts was being followed elsewhere, notably in North Carolina and Pennsylvania. Confronted by all the evidence that was forthcoming it appeared as if the Admiralty Board and the Privy Council were about to undertake a complete reorganization of vice-admiralty courts. In February, 1730, the Board addressed a letter to all governors requiring them to return a complete report concerning the officers, organization and activities of the vice-admiralty courts.[86] The Privy Council directed the Board of Trade to prepare such instructions that colonial governors would be compelled to assist the courts in every way.[87] Beyond this flurry of activity in despatching

[82] *Adm.* 7.339, 5 September, 1723.
[83] *A. P. C., Colonial*, Vol. 2, p. 58, 24 October, 1723.
[84] *S. P. D., Naval*, 18I, 5 May, 1724: *S.P.D.E.B., Secretary Letters*, 5 May, 1724.
[85] *Adm.* 3.35, 4 May, 1724: *S. P. D. E. B., Secretary Letters*, 9 May, 1724: *Adm.* 1.3672, 6 June, 1729.
[86] *Adm.* 3.38, 9 February, 1730: *Adm.* 2.1053, 25 February, 1730.
[87] *A. P. C., Colonial*, Vol. 3, p. 272, 10 and 15 April, 1730: *C. O.* 323.9, 20 April, 1730.

instructions and letters to the colonies nothing was done and, as was so often the case, such means proved ineffective. In general, after 1730, disturbances in the colonies over the courts continued but they were never acute for long. Wherever the effort was made the colonists won their point and in so doing the jurisdiction of the vice-admiralty courts was, in effect, reduced.[88] The report of an officer of the court in South Carolina is an illuminating commentary on the conditions which existed. He wrote in 1733, "It is now become dangerous for a King's officer . . . to appear zealous for . . . the interest of his Master. The laws of the mother country are set at naught and termed old ballads. The King's offices ransacked and his officers insulted."[89]

The period of war which continued with but one brief pause from 1739 to 1763 made it clear that it was not so much the regular marine jurisdiction of the vice-admiralty courts which the colonists objected to as it was their jurisdiction over causes arising out of breaches of the laws of trade and the laws governing the conservation of the New England woods. Shortly after war broke out, the Admiralty Board instructed governors and vice-admirals in their wartime duties. Special commissions, based upon an Act of Parliament, were sent to governors empowering them to grant letters of marque.[90] These instructions were repeated when the Seven Years' War was declared in 1756.[91] The Board actively supervised every phase of the colonial courts' activities in the exercise of these wartime powers and, apparently, little difficulty was experienced.[92]

On the other hand, the principal difficulties the courts experienced in America during these years of war arose as a result of

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[88] *C. O.* 5.293, 28 April, 1730: *Adm.* 2.1053, 23 and 24 March, 1730, 17 May, 1731: *Adm.* 3.40, 14 December, 1731: *Adm.* 2.1053, 8 June, 1736: *Adm.* 3.43, 9 August, 1737: *C.O.* 5.366, 12 June, 1738: Root, *The Relations of Pennsylvania to England*, Chap. IV.

[89] *Hist. Col. South Carolina*, Vol. III, p. 314, 12 May, 1733.

[90] *Adm.* 2. 1053, 20 May, 1740. Quoted in *Navy Records Society*, Vol. 50, pp. 288–9. The Act of Parliament, 13 George II, c.4.

[91] *Adm.* 2.1055, 5 June, 1756.

[92] *Adm.* 7.298, 1 February, 1744, 10 August, 1745: *Adm.* 3.54, 8 and 14 May, 1746: *Adm.* 3.55, 19 August, 1746: *Adm.* 3.56, 19 November, 1746: *Adm.* 2.1055, 21 March, 1750: *Adm.* 2.1056, 12 May, 1758, 5 January, 1760.

illegal trade and waste in the woods. There were vexing examples of this and the Admiralty Board went so far as to draft a law in 1742 which was designed to furnish a remedy.[93] In this draft it was proposed to grant vice-admiralty courts an exclusive jurisdiction over all cases arising out of breaches of the Acts of Trade and to forbid common-law courts to issue writs of prohibition. As a matter of fact this proposed law was not passed but in drafting the provisions the Board showed that it understood clearly the measures that would have to be enforced if the courts in the colonies were to be made effective.

As the Seven Years' War came to a close it became apparent that the colonial courts of vice-admiralty would have to be reorganized and strengthened if they were to exercise their legal functions. This was actually undertaken as a part of the more general effort to strengthen the whole fabric of the old British system in America. In the history of the vice-admiralty courts this marked a new era and rightly belongs to the years following 1763.

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[93] *Adm.* 7.298, folio 14, 7 May, 1742.

III

The Collection of Rights and Perquisites of the Admiralty

The revenue arising from the rights and perquisites or droits of the admiralty was, in the earliest instance, a personal income of the King. Later, it was assigned to the Lord High Admiral as a part of the emoluments of his office. As early as the Tudor period one of the chief duties of the vice-admirals in charge of vice-admiralty jurisdictions in England was concerned with rights and perquisites. These officers had the sole right, legally, to seize objects and goods which were known to be droits. They looked after the Lord High Admiral's interests in captured rights and perquisites and after legal condemnation they transmitted to him either the actual goods or the money which had been realized from their sale.

Lord Howard of Effingham was especially active in seizing droits, and in increasing the revenue which came from this source. He claimed shore prizes, pirates' goods, wrecks, sea casualties, deodands and royal fish as well as flotsam, jetsam, and other wreckage which was washed toward the shore.[1]

When the office of Lord High Admiral was placed in commission at the beginning of the reign of William and Mary, regular salaries were assigned to the members of the Board and the income from rights and perquisites went to the Crown as a casual revenue. Under Queen Anne, Prince George of Denmark, when he was appointed Lord High Admiral, definitely chose to accept a salary. In 1707, he officially renounced all the perquisites of his office, including droits of the admiralty, for an

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[1] Holdsworth, *History of English Law*, Vol. 1, pp. 328–329: R. G. Marsden in the *Law Quarterly Review*, Vol. XV, pp. 353–366. To be exact droits of the admiralty were ships, gear, cargoes, dead bodies, and valuables pertaining to them, nets, trawls, ambergris and treasures. In actual fact it appears that the officials of the admiralty and the navy used the terms "droits of admiralty" and "rights and perquisites of the admiralty" interchangeably.

annual salary of £2500.[2] The Earl of Pembroke made a similar surrender upon succeeding as Lord High Admiral in December, 1708.[3] Following the Earl of Pembroke the Admiralty Board was reestablished and rights and perquisites continued to accrue to the Crown.[4]

Rights and perquisites were of such a nature that the chief income from them was to be expected in time of war, yet in certain years of peace large sums were realized. After 1689, the chief rights and perquisites of the admiralty consisted in ships of the enemy arriving in English or colonial ports on account of stress of weather, accident, mistake or ignorance, enemy vessels captured by English vessels under such circumstances that they could not be considered prizes, wrecks, derelicts, flotsam, jetsam, ligan, pirates' effects, royal fish, and deodands. In addition there belonged to this revenue in the early part of the period a share of all prizes taken.[5] It is apparent that both in war and peace colonial waters were a fruitful source of rights and perquisites. Each war in turn witnessed an increase in naval activities, and the tremendous development of colonial commerce increased wreckage and wastage at sea. During many otherwise peaceful years, pirates and their goods were hunted down and captured. In fact the colonies were looked upon as a most important source of this revenue and were, therefore, included in the provisions which were made for collecting it.

As early as April, 1694, the collection of rights and perquisites was in the hands of an officer styled the Receiver-general.[6] At

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[2] *Adm.* 2.1049, 7 July, 1707.

[3] *Adm.* 2.1050.

[4] Holdsworth, *History of Engish Law*, Vol. 1, pp. 328–9.

[5] *Ibid.*: *Adm.* 2.1046, 9 October, 1695: *Adm.* 2.1049, 7 July, 1707 in *Navy Records Society*, Vol. 50, pp. 207–9. Some of these less familiar terms may be defined as follows. Derelict: A vessel voluntarily abandoned. Flotsam: Wreckage of a ship or cargo found floating on the sea. Jetsam: Goods cast overboard to lighten a vessel. Ligan: Goods sunk in the sea with a buoy attached in order that they may be found again. Deodand: A thing which, because it had been the immediate cause of a person's death, was forfeited to the Crown. Royal fish: Whales, sturgeons, porpoises and perhaps other fishes when taken in territorial waters belonged to the Crown.

[6] *S. P. D. E. B.*, 204, 22 April, 1694. In the *Law Quarterly Review*, Vol. XV, p. 360, R. G. Marsden states that the office of Receiver-general was created about 1700.

this time he was Francis Rainsford and was assisted in the discharge of his duties by a legal officer, the Solicitor for Rights and Perquisites. Rainsford was an admiralty officer and was subject to the orders of the Admiralty Board. In April, 1694, the Lords of the Admiralty directed that he expend, according to the will of the King, as expressed by a Secretary of State, certain sums which he had collected.[7] It appears, however, that Rainsford's general financial transactions were not satisfactory for in 1695 he was first ordered to account for money which had passed through his hands and then was replaced by Andrew Corbet.[8]

The commission and instructions to Corbet were issued by the Admiralty Board in September and October, 1695.[9] According to his commission he was legally appointed to the office, was to collect the revenue, was to obey all the instructions of the Admiralty Board, and a salary of £300 per year out of the sums he collected was assigned to him. In the instructions issued by the Board he was made responsible for the exercise of his office in America as well as in England. He was to inform himself of all rights and perquisites which might come to any English or plantation waters and see that these were properly seized and adjudged. He was to receive reports from all vice-admiralty officers, to report and endeavor to rectify all fraud and abuses. He was to keep his accounts in readiness for examination and to pay all sums ordered by the Admiralty Board. From these instructions it is evident that the Receiver was an admiralty officer. The plantations were included as an integral part of his jurisdiction and he was to cooperate with vice-admiralty officers in proceeding against goods that were seized for condemnation.

In June, 1703, John Dodd was appointed Receiver-general in the place of Corbet. John Warter was associated with him as Solicitor.[10] The Treasury Board displayed a marked interest in

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[7] *S. P. D. E. B.*, 204, 22 April, 1694. A total of £5400 was ordered paid on this day.
[8] *S. P. D. E. B.*, 204, 6 April, 1695: *Adm.* 2. 1046, 13 September, 1695.
[9] *Adm.* 2.1046, 13 September and 9 October, 1695.
[10] *Treas.* 27.17, 25 June, 1703: *Maryland Archives*, Vol. 25, p. 197.

this appointment, for, as will be mentioned later, its jurisdiction extended to every case where revenues were collected. In this particular case the Lords of the Treasury were obviously bent upon placing the affairs of the Receiver on a sounder financial basis than had been true previously. The new Receiver-general was notified that he would be expected to submit to the Treasury Board fortnightly reports of his activities and collections. Neither the Admiralty Board nor Dodd took exception to this notice and it was not looked upon as an encroachment upon admiralty jurisdiction. In the following year the Treasury Board participated further in Dodd's affairs when it announced what the fees of his agents should be.[11]

Dodd's interest in the colonies was evident from the beginning of his official career. He was informed of several vessels brought in as prizes to Pennsylvania, Maryland and Virginia. Thereupon he appointed James and Hercules Couts, merchants of Newcastle, Pennsylvania, as his agents in these three colonies. These agents received full instructions from Dodd concerning their duties and they were carefully charged to see that all sums of money collected should be sent to England.[12]

Other agents in the colonies had been appointed by the Receiver-general before this time. That they had met with colonial opposition in the performance of their duty became evident in the early years of the War of the Spanish Succession. In November, 1703, the Admiralty Board received reports that the colonial agents were hindered in the exercise of their duty because the governors in America actually seized and disposed of those goods which rightly belonged to the agents. The Lords of the Admiralty transmitted this information to the Privy Council and requested the Council to take what action might be necessary for the correction of the abuse.[13] The Admiralty Board was moved to make this appeal primarily because of John Warter's reports. He set forth that the greatest opposition was met in New England and in the West Indies. In addition to

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[11] *Treas.* 54.18, 31 July, 1704.
[12] *Maryland Archives*, Vol. 25, pp. 197–9.
[13] *Adm.* 7.336, 12 November, 1703.

placing the whole matter before the Admiralty Board he also made a report to the Board of Trade and appeared before it in person.[14] In January, 1704, he made a further statement to the Board of Trade and requested that a letter should be sent to each of the colonial governors in an effort to gain their cooperation.[15]

The income from rights and perquisites which, in the early years of the War of the Spanish Succession, had amounted to large annual sums declined appreciably thereafter.[16] Efforts were made in England to correct abuses and to make collection more efficient. The Treasury Board notified Dodd of rights and perquisites brought into Maryland and directed him to see to it that these were properly accounted for.[17] Dodd and Warter frequently appointed new agents in the colonies and issued new instructions to them.[18] In 1707, the Treasury Board issued new instructions for the seizing of prizes for it was stated that goods belonging to the government had been stolen, embezzled and subjected to abuses in Jamaica, Nevis, Antigua, Montserrat, St. Christopher, Bermuda, New Hampshire, New York, New Jersey, Maryland, Virginia and other colonies.[19]

In general it may be stated that until the year 1707 the Receiver-general had endeavored to maintain a distinct group of agents in the American colonies for the collection of rights and perquisites of the admiralty. These agents had met with difficulties in the exercise of their duties and they had frequently reported that droits of the admiralty were improperly seized and were not accounted for to them. The Receivers and the Admiralty Board, in an effort to correct abuses, had sent letters and instructions to colonial officials and from time to time new agents had been appointed. In the year 1707, with the appointment of Robert Quary as agent for rights and perquisites on the continent of North America, a change was made.

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[14] Headlam, 6 December, 1703, p. 860 and 20 December, 1703, p. 888.
[15] *Ibid.*, 20 January, 1704, p. 20.
[16] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 6, 23 November, 1704.
[17] *Treas.* 27.18, 24 September, 1705.
[18] *Maryland Archives*, Vol. 25, 11 February, 1706.
[19] *Treas.* 27.18, 11 June, 1707.

Quary was the Surveyor-general of the Customs in North America and consequently was a treasury official. In the order which was issued in August, 1707, appointing Quary as agent, the Admiralty Council set forth the conditions which had existed and the duties which the new agent was expected to perform. It was stated that in the past great difficulty had been experienced in recovering droits of the admiralty in the colonies and the Council was of the opinion that this would continue unless some more effective means of collection were devised. Consequently, it was considered wise to appoint a single agent in the colonies whose representatives in every part of North America could act for him with greater efficiency. Quary was required to submit periodic reports of his activities to the Council and he was promised a salary from the English treasury.[20] The Treasury Board was notified of this arrangement and was requested to make provision for Quary's salary.[21]

This appointment of Quary was a move in the direction of greater effectiveness in the means of collecting droits of the admiralty in the colonies. At the time of his appointment Quary was the chief customs officer in North America, and he had under his control the whole of the existing customs establishment. Through this group of officials, already organized and functioning, rights and perquisites could be more adequately collected. Although, for these reasons, Quary's appointment may appear very important the results show that the plan was not far reaching. Quary's control over the whole customs system in North America was reduced in 1709 to the Southern Department. His death practically coincided with the close of the War of the Spanish Succession and thereupon the arrangement for one agent for the North American continent lapsed. The Receiver-general fell back into the practice of appointing his agents where he deemed them necessary. The appointment of Quary proved to be an experiment which was not given a careful trial.

From another point of view, however, the appointment of

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[20] *Adm.* 2.1049, 19 August, 1707.
[21] Redington, 15 September, 1707, p. 535.

Quary was significant. The Treasury Board was gradually coming to exercise a greater influence and control not only over the lesser agents for rights and perquisites but also over the Receiver-general himself. The colonial agents who were appointed by the Receiver-general after 1713 were usually customs officers. Later, as it will appear, the Auditor-general of the Customs in America was required to audit the accounts of colonial agents for rights and perquisites and, further, lesser customs officials, if they were not agents, were ordered to render assistance. In the colonies, then, customs officials either acted as agents for rights and perquisites or they were in closest cooperation with the special agents who were appointed. By these and other means the Treasury Board assumed a large if not controlling part in the collection of the revenue. In its expenditure they came to exercise an exclusive right.

In these years when an effort was being made to increase the revenue which arose from rights and perquisites it suffered a diminution at the hands of Parliament. By an Act for the encouragement of the trade to America, which was usually known as the American Act of 1707, it was provided that the officers and men of a vessel taking a prize should, upon its condemnation, have the sole right in it.[22] This law was intended to encourage the activities of English privateers. Since, however, a tenth part of all prizes had been paid, heretofore, as droits of the admiralty the law operated to reduce materially the amount of this revenue.

In 1720, upon the decease of Dodd, Robert Byng was appointed Receiver-general.[23] Thomas Jobber was associated with him as Solicitor.[24] Byng and Jobber were informed that pirates' goods were being concealed in New England by private persons. Byng appointed Archibald Cumings to act as his agent in New England. The Lords of the Admiralty were notified of this appointment and they were requested to obtain from Lord Carteret, the Secretary of State, a letter to Governor Shute directing him to

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[22] 6 Anne, c.37, 1707.
[23] *Adm.* 2.1052, 14 November, 1720.
[24] *Adm.* 1.3670, 13 September, 1721.

render assistance to the agent.[25] It was called to the attention of the Lords of the Admiralty that a letter of similar nature had been sent to Governor Hamilton of Antigua in 1720.[26] The Lords of the Admiralty complied with the request made of them. At their command, Josiah Burchett, secretary of the Board, addressed a request for assistance to Lord Carteret who in turn wrote to Governor Shute ordering him to see that all droits of the admiralty which were held illegally in his government should be given up to the proper officers.[27]

Cumings who had sailed for New England in 1721 found the problems which confronted him were difficult of solution. Upon his authority Byng and Jobber reported to the Lords of the Admiralty that in New York and Rhode Island goods which should rightly be classed as droits of the admiralty were in private hands. The captain of a royal vessel stationed in American waters was included in this charge.[28] Upon receiving this report the Admiralty Board wrote again to Lord Carteret. A charge against Rhode Island and New York was made and Lord Carteret was requested to write to the governors of these two colonies directing that they should render assistance to agents. At the same time the Admiralty Board dispatched letters to the governors of New York and Rhode Island and to the captain of H. M. S. *Seahorse*. The governors were notified that Cumings was an agent whose duty it was to receive all droits of the admiralty and they were expected to aid him.[29] The captain was ordered to deliver to Cumings the rights and perquisites he had been withholding.[30]

Before another month had passed Governor Shute had turned the attention of the Admiralty Board from himself to Rhode Island. He reported to the Board that the admiralty officers in New England were charging the Governor and Council of Rhode Island with retaining rights and perquisites. Shute's letter was first sent to the Judge of the High Court of Admiralty for his

[25] *Adm.* 1.3670, 13 September, 1721.
[26] *S. P. D., Naval*, 17I, 6 August, 1720.
[27] *C. O.* 324.34, 14 September, 1721.
[28] *Adm.* 1.3670, 8 April, 1722.
[29] *Adm.* 3.34, 14 April, 1722: *Adm.* 2.1052, 16 April, 1722.
[30] *Adm.* 3.34, 14 April, 1722.

opinion. The whole case was then placed before the Privy Council and it was requested to send an order to the governor and council of Rhode Island directing them that droits of the admiralty should not be interfered with.[31] At the same time the Admiralty Board dispatched a letter to the governor and council in Rhode Island ordering them to turn over to the court of vice-admiralty all the goods which had been condemned.[32] Finally, in December, 1722, at the request of Byng the Admiralty Board forwarded to the governor of Rhode Island an Order in Council which directed him to deliver to Judge Menzies the droits of the admiralty which had been seized. The Board ordered that Judge Menzies should hand the recovered droits over to Cumings who in turn should forward them to Byng in England.[33]

Beginning in 1726, although it was a period of peace, a renewed interest was taken in the affairs of the Receiver-general. This was due in large measure to the fact that the expenses of Byng's office were greater than the revenue he was collecting. After the Treaty of Utrecht in 1713 the Receiver's agents in America had been engaged, primarily, in seizing and condemning pirates' goods which were brought into colonial ports. At first there were numerous captures but as pirates were exterminated the revenue from this source dwindled appreciably and the total amount collected from all sources became very small. Both the Treasury Board and the Admiralty Board were concerned in this state of affairs and an examination of the Receiver's activities and records revealed the fact that his accounts had not been carefully kept. The Treasury Board was most vitally interested for it was dealing with an office which was designed to produce a revenue whereas the receipts were falling far below the expenditures.

Byng received new instructions from the Treasury Board in April, 1726, and these were followed in October, 1727, by instructions from the Admiralty Board.[34] The Treasury Board stated briefly the nature of Byng's office and indicated that he was to

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[31] *Adm.* 3.34, 2 August, 1722.
[32] *Adm.* 2.1052, 2 August, 1722.
[33] *Adm.* 1.3670, 20 December, 1722.
[34] *Treas.* 52.34, 23 April, 1762: *Adm.* 2.1053, 9 October, 1727: *Adm.* 1.3672.

perform all the duties assigned to him. The most noteworthy of these provisions was that he was to render his accounts to the Treasury Board and that he was to give bond. The Admiralty Board, playing its part in the effort to strengthen the position of the Receiver, sent instructions to all vice-admiralty courts in the colonies directing that rights and perquisites of the admiralty should invariably be turned over to Byng or to his agents.[35] Two days later it issued new instructions to Byng. By these he was directed to appoint agents in all necessary places. These agents were to correspond with him, obey his orders and receive an allowance out of the goods they confiscated. Byng was made responsible for the seizure, trial and sale of all rights and perquisites in the colonies. He was to control his staff of agents, keep their number within limits and to hold accounts and records open for audit or inspection at all times.[36]

In spite of these instructions to Byng and to colonial officials the condition of the office caused further concern. Byng petitioned the Privy Council showing that the instructions usually issued to American governors were in conflict with the instructions which he had received. Governors had been instructed to accept the custody of pirates' goods whereas Byng claimed the right to receive them. The Privy Council ordered that governors' instructions should be altered to conform with those issued to the Receiver-general.[37] Byng further petitioned the Treasury Board. He showed how the income of his office had been greatly reduced. He gave three principal reasons for this. The usual sources of income had disappeared, in large measure; many rights which were formerly collected no longer came to his hands, legally; American governors and vice-admiralty officers had shown shameful neglect or positive abuse in handling the goods which should have come to him.[38] Later, he pointed out that money arising from rights and perquisites should be accounted for with him yet Governor Shute of Massachusetts refused to do

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[35] *Adm.* 3.36, 7 October, 1727.
[36] *Adm.* 2.1053, 9 October, 1727: *Adm.* 1.3672, 9 October, 1727.
[37] *A. P. C., Colonial*, Vol. 3, pp. 171–2, 3 October and 14 December, 1727.
[38] Redington, 20 December, 1727, pp. 476–7.

so. The Treasury Board ordered Shute to render an account to Byng.[39]

In 1729, Byng petitioned the Treasury Board for an allowance for the incidental expenses which he regularly incurred. He cited as a precedent the fact that Dodd had received such a grant in 1709.[40] The Treasury Board gave this petition careful consideration and as a result, Byng and his office were called seriously into question. It was noted by the Treasury Board that he had failed to give vouchers for the incidentals he had already incurred, and this was, in fact, most noticeable because the incidentals were comparatively large. That the Treasury Board was inclined to make no concessions became clear when, in the midst of this discussion concerning incidentals, Byng was ordered to pay regular customs duties on jetsam, flotsam and ligan.[41]

Byng's request for an additional allowance led to his resignation. The Treasury Board learned that his incidental account was nearly equal to the total income of his office.[42] The Board criticised severely the affairs of the office for it "more than a canker hath gone much beyond devouring the body it should live upon and ought certainly to be reformed."[43] Byng desired now to be paid for his services and to be allowed to resign. The Treasury Board was coming to the opinion that he should be paid, allowed "to resign back his employ to the Treasury and Admiralty" and that the receivership should be attached to some minor admiralty office.[44] According to Byng's accounts £4080 was due him as his salary for the twelve years of his service ending in November, 1732, and in the same period he had collected slightly more than £1800. The Treasury Board agreed to pay him the £4080 and the incidental expenses for which he had vouchers but this payment was to be made on the condi-

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[39] *Ibid.*, 23 May and 6 June, 1728, p. 515.
[40] *Treas.* 4.10, 14 June, 1729: Redington, 14 November, 1729, p. 156.
[41] Redington, 21 November, 1729, p. 159.
[42] Shaw, 19 October, 1731, p. 101.
[43] *Ibid.*, 14 November, 1731, p. 103–4.
[44] *Ibid.*: *Treas.* 52.38, 11 September, 1734.

tion that he should resign. Byng resigned and payment was finally completed in 1734.[45]

The Treasury Board had suggested as early as November, 1731, that the sums collected from rights and perquisites did not justify the independent office of Receiver-general.[46] In its opinion the office should not be suppressed but might well be filled by the Register of the High Court of Admiralty. This opinion obtained and in June, 1733, Burrington Goldsworthy, Register of the High Court of Admiralty, was commissioned as Receiver-general of rights and perquisites to succeed Robert Byng.[47]

Goldworthy's instructions were explicit in regard to certain matters which heretofore had caused difficulty. The Receiver was to give security to the Treasury Board for his official acts. The Receiver-general and Auditor-general of colonial customs, colonial governors and officers of the vice-admiralty courts were specifically ordered to render him assistance in the discharge of his duties. He was to maintain deputies or agents in all places where droits were likely to be received. He was to make a report to the Treasury Board every three months and submit his accounts for an annual audit. His colonial accounts were to be submitted to the Auditor-general of the colonial customs. Previous instructions which had been issued to colonial governors were altered to suit the terms of Goldworthy's instructions and copies of them and all orders issued to him were to be transmitted to all places where droits were expected.[48]

This new arrangement continued to exist later than 1763 and consequently the office of Receiver-general was maintained at the least possible expense. However, the relationship which was finally to exist between the Admiralty Board and the Treasury Board in their control over the Receiver-general and the revenue which he collected was yet to be settled.

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[45] *Shaw*, 11 September, 1734: *Treas.* 52.38, 11 September, 1734.
[46] *Shaw*, 14 November, 1731, pp. 103–4.
[47] *Shaw*, 4 January, 1733, p. 363: *Treas.* 52.38, 26 June, 1733. In the *Law Quarterly Review*, Vol. XV, p. 363, R. G. Marsden states that the office of Receiver-general was abolished in 1737 because the expenses were more than the income.
[48] *Treas.* 52.53, 26 June, 1733.

As has been pointed out, one of the significant facts in regard to the collection of rights and perquisites was the increasing influences and control which the Treasury Board exercised as time passed. From the historic point of view this revenue and the officers who collected it belonged to the admiralty but in actual practice after 1689 the Treasury Board became interested in the revenue and in the officers. The question of the relationship between the two Boards came up in a formal manner in 1722 when Byng's colonial agent, Cumings, was experiencing such difficulty with the governors of Massachusetts and Rhode Island. The Lords of the Admiralty admitted at this time that the Lords of the Treasury possessed the right to expend the revenue which was collected from the sale of droits of the admiralty but the actual collection of droits, it was contended, belonged solely to those officers whom the Admiralty Board appointed. The Lords of the Admiralty made it clear that they did not desire to interfere with the rights and duties of the Treasury Board but in turn they insisted upon their own rights.[49]

The relationship which finally came to exist between the two Boards is indicated in the draft of an Order in Council which was prepared in 1749. In this draft it was stated that droits of the admiralty were looked upon as an admiralty matter yet the Treasury Board possessed an "undoubted right to interpose their authority in all cases where revenues of any kind are to be taken, collected and received. To prevent confusion or disorder which must of necessity happen in our . . . Revenues in case authority be exercised in opposition to one another . . .," the relation which was to exist between the two Boards was stated. The Admiralty Board was to appoint but the Treasury Board was to approve officers who collected rights and perquisites. Because of this close relationship all customs officials and other treasury officers were to render assistance to admiralty officers who had to do with the revenue. Each month the Admiralty Board was to render an account to the Treasury Board of all sums which had been received. The Treasury Board was responsible for the expenditure of these sums. Finally, since the greatest

[49] Redington, 12 October, 1722, pp. 163–4.

amount of business connected with the collection of rights and perquisites arose in the colonies the Auditor-general of Customs in America should audit all colonial accounts.[50] It may be concluded from this that the Treasury Board exercised the chief authority and control although the revenue was looked upon, according to custom, as belonging to the admiralty and the Receiver-general continued to be viewed as an admiralty officer.

From 1733, when Goldsworthy was appointed Receiver until the end of the Seven Years' War the official records are remarkably silent concerning rights and perquisites. It appears, however, that the revenue was not wholly neglected and that at times large sums were realized. It is certainly true that Goldsworthy continued to hold the office of Receiver since his commission was renewed after the accession of George III.[51]

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[50] *Treas.* 1.337, 1749.
[51] *Treas.* 52.53, 25 February, 1763.

IV

Naval Defence of the Colonies

It was the principal duty of the Admiralty Board to direct the affairs of the navy in such a way that Great Britain, her possessions and her commerce would be secure against foreign aggression. The navy was the great bulwark of safety and the link which held the colonies close to the mother country. In time of war the first object of all naval plans and preparations was to crush the power of the enemy at sea, for until this was accomplished true security could not be realized.

The English colonies were given consideration in the schemes of naval operations and defence which the Admiralty Board devised. As it happened no successful naval attack upon the colonies was launched by an enemy between 1689 and 1763. There were times, however, when it appeared that the colonies were particularly open to attack but the difficulties which beset the British navy in providing for colonial defence likewise operated to prevent the success of hostile fleets. If this had not been true the Admiralty Board would have found it necessary to devote much more time to the colonial phase of the general problem than it actually did.

The importance attached to the colonies in every general scheme of defence which was devised varied from time to time but depended in every case upon several more or less constant factors. The colonies were an integral part of the realm yet their great distance from England and their extended coast lines and detached islands made them exceedingly vulnerable. Extended as they were, then, from north to south, their position was rendered even less secure because of the close proximity of the colonies of France and Spain who proved to be the principal naval rivals of England in the eighteenth century. Well defended harbors with enemy vessels passing in and out were almost within sight of English islands in the West Indies. In addition to this the importance of the colonies to England was increasing yearly because of trade. The value of products exchanged

between England and the colonies in the eighteenth century increased beyond the expectation of the most sanguine. Both British and colonial merchants became wealthy and hundreds of vessels were engaged in this trade. Inasmuch as many of the colonial products such as furs, tobacco, naval stores and sugar contributed to the economic development of Great Britain the slightest interruption of colonial trade was viewed as a national calamity. Finally, it may be added that even during many years of peace the presence of pirates in American waters kept the problem of colonial security before the Admiralty Board.

The importance which was attached to the American trade caused the Admiralty Board to take special precautions in regard to it and as a result a system of convoys was gradually evolved. Between the naval defence of the colonies in general and the convoy service a close relationship existed. The British navy furnished the vessels which acted as convoys and these, upon reaching their colonial ports, were attached to squadrons already stationed there or were held in readiness as a means of defence. When, as it happened, the fleets of the enemy were broken up and privateers hovered like birds of prey about every merchant fleet and every important colonial port, men-of-war, acting as convoys, played a most important role. In spite of this close relationship, however, the service of convoying the trade was sufficiently distinct to merit a separate treatment and is discussed in a subsequent chapter.

In providing for the security of the colonies the Admiralty Board used different methods as the situation demanded. There were times when one or more fleets were actually operating in American waters. A much more common arrangement was that of sending an active squadron to colonial waters. The West Indies were seldom without such a squadron with headquarters at Jamaica. On numerous occasions squadrons were stationed elsewhere, this being particularly true after 1756. The commanding officer of an active squadron in colonial waters carried a great weight of responsibility and discharged duties of importance. His formal instructions, issued by the Admiralty Board, were commonly drawn in general terms and required that he protect British colonies and trade within a stated area. In addi-

tion, he was given discretionary powers which enabled him to meet every situation which might arise. It was customary for commanding officers to work in a spirit of harmony with colonial governors although there were notable exceptions to this.

It was by no means possible to protect the whole coast line of the American colonies by fleets and independent squadrons. The navy was unable to furnish as many ships as this would have required, and furthermore, in the opinion of the Admiralty Board, such powerful protection was not necessary for all the colonies. Consequently, stations were designated which included all the colonies not otherwise provided for and one or more small vessels were assigned to each of these stations. The naval officer in command of a station received general instructions from the Admiralty Board but, in addition, he was subject to the commands of the principal colonial governor whose colony he was protecting. There was considerable friction between governors and the captains of stationed ships and at times their misunderstandings were carried to the Board for settlement.

The Admiralty Board experienced difficulty in obtaining the greatest usefulness from the ships in colonial waters. The distance of the colonies from England made the efficient control of vessels almost impossible. The long and hazardous voyage not infrequently rendered ships unseaworthy by the time they reached their colonial stations and repairs had to be made in spite of the fact that adequate means were sometimes lacking. These mechanical difficulties, however, were not as trying as others which existed. Officers of the navy as well as the seamen disliked colonial service. Seamen disliked it, primarily, because of the climate. Officers had other reasons, also. They suffered great inconvenience caused by a lack of colonial support. Furthermore, they felt that colonial service took them out of the line of promotion and caused them to be forgotten. Other difficulties existed but these principal ones taxed the ability of each successive Board and reduced the effectiveness of ships stationed in American waters.

The importance attached to different groups of colonies from a naval point of view was not the same during all the wars of

the period. During the War of the League of Augsburg the Admiralty Board was most interested in the West Indies. The mainland colonies to the northward were left rather exposed. Throughout the three subsequent wars the West Indies continued to receive powerful protection while the needs of the mainland colonies were much more carefully considered. Time after time changes were made in the stations and in the number of ships assigned to each. The culmination of naval activity in American waters came in the Seven Years' War. The several naval stations were strongly defended and squadrons or fleets operated regularly in West Indian waters and between Massachusetts and the mouth of the St. Lawrence River. Naval vessels crossed and recrossed the ocean as they convoyed merchantmen or brought supplies and soldiers to the colonies. In general the security of the colonies, from a naval point of view, was more adequately provided for during this war than ever before.

When Samuel Pepys ceased to act as secretary to the Admiralty Commission in 1689 the beginning of hostilities between England and France was imminent and two vessels, one fourth rate and one sixth rate, were stationed at Jamaica, one fifth rate at Boston and two sixth rates at Virginia.[1] It was the middle of the following year before reenforcements were sent out and until they reached the colonies the American settlements were practically unprotected.[2] The French might have struck a vital blow at this time had such action suited the plans of Louis XIV, for the French fleet had been brought to a state of great efficiency by Colbert. Although James II had done much to increase the efficiency of the English fleet, the French were numerically equal, if not superior, to the combined Dutch and English power. However, Louis XIV turned his attention to military operations and the opportunities at sea were lost.[3] In May, 1690, the

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[1] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 2, p. 185. The rate of royal vessels was determined by their size and the number of guns they carried. The largest and most heavily armed were termed first rate. Below the sixth rate they were termed sloops or were designated according to their particular use. The fireship and the bombship are examples.

[2] Clowes, Vol. 2, p. 463.

[3] *Ibid.*, pp. 323, 326.

period of acute danger in the West Indies was ended by the arrival of thirteen vessels which were stationed at Barbados.[4]

The Admiralty Board announced the different colonial stations, or headquarters of defence for designated portions of sea coast, to which one or more vessels, in addition to other forces, were permanently assigned. In the West Indies the three stations were Jamaica, Barbados and the Leeward Island. To the northward the four stations were Newfoundland, Boston as the center for the New England coast, New York and Virginia.[5] In the West Indies the commander of the active squadron was responsible for the stations there and, furthermore, he was directed to cruise northward to the mainland, as far as Virginia, if necessary. It is obvious that these instructions for cruising would have been very difficult to obey if a strong French fleet had appeared in West Indian waters. The vessels stationed to the northward were small. Those at New York and Boston were ordered to spend the winters convoying the trade to the West Indies and return.[6]

Officials in the colonies reported to the Board that they were in a position of grave danger and that a few French men-of-war could do incalculable damage.[7] Captain Fairfax, stationed at Boston, explained how helpless his situation was. The truth of these reports was demonstrated when the French Admiral, de Tourville, made a brilliant cruise toward the West Indies and captured several English merchant vessels.[8] Shortly thereafter, however, the Admiralty Board sent reenforcements to the West Indies. In January, 1692, Commodore Wren took command in that quarter and, with seven vessels, fought a brilliant engagement with a French force that outnumbered him three to one.[9] In 1693, Sir Francis Wheler was in the West Indies with a squadron of fourteen men-of-war. He failed in attacks upon Guadeloupe and Martinique. Obeying instructions from the Admiralty Board, he sailed northward in the summer of 1693

[4] *Ibid.*, p. 463.
[5] *Adm.* 2.20, 21, 22.
[6] *Adm.* 1.5146, 2 October, 1696: Clowes, Vol. 2.
[7] Hist. Mss. Cm., Vol. 14, Part III, 7 August, 1691.
[8] Clowes, Vol. 2, p. 345.
[9] Clowes, Vol. 2, p. 464.

for the purpose of attacking French settlements at the mouth of the St. Lawrence River. He reached Boston badly in need of repairs, men and supplies but since the Admiralty Board had failed to send instructions to the governor of Massachusetts no aid whatsoever could be obtained. Wheler was forced to abandon his design and returned to England in a badly crippled condition.[10] The English continued their activities in American waters until the close of the war.[11]

After the battle of La Hogue in 1693 the character of the war at sea changed in such a way that the colonies and colonial trade were materially affected. After that time the English navy maintained a virtual supremacy at sea and the French sought to avoid naval engagements and commissioned fewer ships of the line. On the other hand, however, an increasing number of French privateers were commissioned and private companies were organized for the purpose of carrying on privateering. These privateers preyed upon English merchantmen wherever they could be found. The Admiralty Board failed at first to grasp the significance of these changes and the English navy, for a time, appeared to be particularly inefficient. English trade, especially that with the colonies, suffered great losses and colonial merchants, along with others, demanded more adequate protection. Toward the end of the war the Board had recognized the danger and the dispositions which were made effectively reduced the losses.[12]

The War of the League of Augsburg brought to the attention of the Admiralty Board several difficulties connected with naval service in America which were significant and which reappeared during subsequent wars. The instructions which the Board issued to officers were by no means invariably observed in the best spirit. In order to correct this abuse colonial governors were given a general supervision over these officers but the result was numerous quarrels and frequent misunderstandings. Captain Fairfax stated the usual grievances when, in 1693, he

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[10] Clowes, Vol. 2, pp. 470 ff.
[11] Clowes, Vol. 2, pp. 490 ff.
[12] *Ibid.*, pp. 360–1: Mahan, *The Influence of Sea Power upon History*, pp. 194–6.

reported that he was uneasy on his station at Boston. When his stores were exhausted and his vessel was in need of repairs he received no aid from the colonial authorities. He stated that no royal officer was ever welcome there and often they were abused. Finally, he felt that at Boston he was far removed from the line of promotion.[13]

The report of Captain Fairfax concerning the colonial attitude was not the only one the Admiralty Board received but nothing was done to improve the situation save the dispatch of additional instructions to governors. As was too often the case this proved ineffectual.[14] The Admiralty Board did endeavor, however, to relieve the burden of long service in colonial waters. As far as possible officers were recalled to England annually.[15]

The years which intervened between the Treaty of Ryswick, in 1697, and the beginning of the War of the Spanish Succession, in 1702, were marked by unrest and, at best, they were troubled years. One of the principal reasons for continued naval activity in America was the fact that pirates became numerous immediately after the treaty was announced. Piracy was by no means confined to colonial waters for the Admiralty Board learned that these marauders were numerous and active in the Red Sea, the Indian Ocean, on the east and west coasts of Africa and even close to the shores of England. Though the seas were never wholly free of pirates their appearance at this time over so vast an area and in large numbers was, doubtless, a consequence of war. The Admiralty Board had issued commissions to a large number of privateers before the war was over and, among others, many desperate men had been drawn into this service. It was an easy transition from privateering to piracy for although the commissions issued by the Board terminated with the close of the war the temptation was to continue to cruise against trade and take rich prizes no matter what flag protected them.

The Admiralty Board received many extensive reports con-

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[13] Fortescue, 31 January, 1693, p. 12.

[14] The failure of efforts to regulate, by instructions, the impressment of seamen, the value of foreign coins, the granting of regular salaries to governors are striking examples, among many, of this.

[15] *Adm.* 2.5146, 22 October, 1696: Clowes, Vol. 2: *Adm.* 2.21, 22, 23.

cerning the activities of pirates in colonial waters. Royal governors and other officials appeared to be greatly disturbed over the situation and transmitted their apprehension both to the Admiralty Board and to the Board of Trade. Governor Beeston of Jamaica reported that certain men who had turned pirates were possessed of £300,000. They had offered him "a great gun (£20,000)" if he would allow them to return peacefully to Jamaica. This he refused.[16] Edward Randolph reported that many pirates frequented the ports of New England.[17] Governor Bellomont admitted that pirates were to be found in New York and both he and Joseph Dudley of Massachusetts accused Rhode Island of sheltering them.[18] In some of the reports which were sent to England illegal traders were doubtless referred to as pirates but there can be no doubt that the number in colonial waters was very great.[19]

It is interesting to observe that in some cases colonists were closely related to pirates. If they were to gain advantage from their activities it was necessary that pirates should have a market for their captured goods. A port or colony where pirates' goods were received was usually termed a receptacle and several of the colonies were described as such.[20] In fact, as long as colonial trade was not directly affected by pirates the colonists did not support the efforts of the British government to stamp them out. It was only when colonial trade began to suffer and towns were actually threatened by the free-booters that the colonists seconded the efforts of the government.

The Admiralty Board quite naturally depended upon the navy to protect commerce and to stamp out piracy. In addition to sending Rear Admiral John Benbow to the West Indies, special expeditions were sent against pirates' strongholds in the Mediterranean Sea, the East Indies and on the coasts of Africa.[21]

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[16] Fortescue, 15 June, 1696, p. 20.
[17] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 2, paragraph 1115.
[18] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 5, paragraph 1829: *New York Colonial Documents*, Vols. 4 and 5.
[19] *A. P. C., Colonial*, Vol. 2, p. 294: Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 2, paragraph 1115.
[20] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 2, paragraph 1115: see, also, the same collection, Vol. 5.
[21] Clowes, Vol. 2, pp. 365, 497, 498.

Benbow was delayed in reaching the West Indies and until he arrived at Jamaica the safety of the colonies and trade depended upon the ships on regular stations. The size and number of these were probably inadequate for in 1697 and 1698 there were five small rate vessels stationed in the West Indies, one sixth rate each at Virginia, Maryland and New York and one fifth rate at Boston. In the West Indies, at least, the number of stationed ships was increased for in 1699 there were nine.[22]

The newly created Board of Trade assisted the Admiralty Board in discovering the facts concerning piracy in colonial waters and in suggesting a remedy for the situation. Jeremiah Basse of New Jersey was in London in 1697 and he was called before the Board. He pointed out the conditions which existed and the need for courts which could be trusted to convict. If the general spirit of lawlessness were not checked, in Basse's opinion, "the strongest hand and the longest sword will be the best titles to estates" in the colonies.[23] Basse was unable to give particular instances of piracy but his opinions were given wide currency by the Board of Trade. Toward the end of 1697 this Board suggested that an Act of Parliament would best meet the situation and until it could be passed orders should be sent to the colonial officers of vice-admiralty requiring them to exercise the greatest vigilance in apprehending pirates and trying them in the colonies or sending them to England for trial.[24] In the early part of 1698, an Act of the Barbados Assembly concerning piracy was transmitted to all the colonies as a model to be followed and, later, Sir Charles Hedges, Judge of the High Court of Admiralty, prepared the draft of a law for the suppression of piracy.[25] However, nothing more was done at this time.

In 1699, the activities of pirates reached their height. Naval measures had failed and in several colonies pirates were sheltered and aided. It was even suggested that pirates were likely to

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[22] Fortescue, 8 November, 1697: *Adm.* 1.3814, 11 January, and 15 February, 1698: *Adm.* 7.333, 19 January, 1699: Headlam, 19 January, 1699.
[23] Fortescue, 26 July, 1697.
[24] Fortescue, 4 December, 1697.
[25] Fortescue, 21 March, 30 March, and 5 April, 1698.

operate in fleets along the colonial coasts.[26] The Admiralty Board increased the number of ships stationed in colonial waters and endeavored to enforce an order issued by the Privy Council.[27] By this order it was required that in most cases pirates who had been captured were to be sent to England for trial. Governors Bellomont of New York, Blakiston of Maryland, Nicholson of Virginia, Beeston of Jamaica and Codrington of the Leeward Islands were particularly trusted and were allowed to institute trials in their own colonies if they deemed convictions could be obtained.[28]

In 1700, an Act was passed by Parliament for the suppression of piracy and the trial of pirates in the colonies.[29] By this Act piracy was defined and it was provided that pirates should be tried by special commissions of seven persons each who were to exercise all the powers and follow the procedure of a court of vice-admiralty. The right to pass the sentence of death was specifically granted. Additional provisions dealt with the method of constituting a commission in an emergency and stated that the law should remain in force for slightly more than seven years. Finally, the law provided that the commissions contemplated should be issued either upon the authority of the Admiralty Board or by the King under the Great Seal. In actual fact these commissions were issued under the Great Seal.[30]

The law was put into operation immediately. By royal proclamation pardon was offered to all pirates who should give themselves up before March 6, 1701, and many persons took advantage of this act of leniency. Nine commissions were issued, one for Massachusetts, New Hampshire and Rhode Island, one for Newfoundland, one for New York, Connecticut, and the Jersies, one for Maryland, one for Virginia, North and South Carolina, one for Bermuda, one for Jamaica, one for

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[26] Headlam, Introduction, 1698–9, 5 November, 1699: *Adm.* 1.5147, 9 November, 1699.

[27] *Adm.* 1.5147, 9 November, 1699.

[28] *New York Colonial Documents*, Vol. 4, p. 603: *S. P. D. E. B.*, 101, 18 July, 1699: Headlam, 31 August, 1699, p. 418: *S. P. D. E. B.*, 204, 4 December, 1699, 8 July, 1700: Headlam, 1700, p. 27.

[29] 2 William III, c. 7.

[30] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 4, paragraph 1718.

Barbados and one for the Leeward Islands. Sir Charles Hedges, Judge of the High Court of Admiralty, chose George Larkin as a person qualified to proceed to the colonies, instruct commissioners and provide for uniform procedure. Larkin who had served as a deputy advocate in the High Court of Admiralty was accepted and under the Great Seal was commissioned to proceed to America to "settle such rules and forms of proceedings in the courts for the trying of pirates as ought to be observed." He arrived in America in August, 1701, and began at once to perform the duties assigned to him.[31] In his final report Larkin stated that colonial waters had been practically cleared of pirates.[32]

The question of piracy had hardly been disposed of before the Admiralty Board was called upon to prepare for the beginning of the War of the Spanish Succession. The French were concentrating a superior naval force in the West Indies which, by the end of 1700, amounted to twenty vessels with more than thirteen hundred guns. The Board noted this fact and detached Vice Admiral John Benbow with ten third and fourth rate ships from the channel fleet, commanded at that time by Sir George Rooke.[33] Benbow reached his station at Barbados in November, 1701, under orders to strengthen and support the English possessions and ascertain the strength of the French and Spanish. He found they were collected in force and were actively engaged in increasing their strength.[34] Early in 1702, Benbow was reenforced by Commodore William Whetstone and it appeared as if the safety of the West Indies was assured. However, when Benbow engaged Ducasse in August, only one English captain fought bravely, the rest flying before the French or refusing to fight. Benbow was mortally wounded, the English squadron was wholly demoralised and for a time the French were superior. Fortunately they made little use of this superiority

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[31] *A. P. C., Colonial*, Vol. 2: Headlam, 9 May, 5 June, 6 June, 1700, 24 January, 14 April, 1701: Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 4, paragraph 1718.

[32] Headlam, Introduction, 1701, 14 October, 1701, 5 December, 1701, 22 December, 1701, 19 August, 1702, 29 April, 1703.

[33] *S. P. D., Naval*, 6, 5 June, 1701.

[34] Clowes, Vol. 2, p. 367.

and the English colonies were safe when Captain Hovenden Walker arrived with reenforcements.[35] During the subsequent years of the war an adequate naval force was maintained in the West Indies. A number of brilliant officers, among whom were William Whetstone, Charles Wager, and Hovenden Walker, succeeded in command and the power of the enemy in that quarter was broken.

As was the case in the War of the League of Augsburg, the Admiralty Board maintained stationed ships at strategic points in the West Indies and in the colonies to the northward. As before, the protection of the Carolinas was left to the West Indies squadron. Virginia, New York, Boston and, later, Newfoundland were considered regular stations. In 1702, the Board considered recalling, each winter, the vessels stationed at Boston because the severe weather rendered them useless.[36] Later the Admiralty Council planned, in like manner, to recall the stationed ships at New York and Virginia. Before the order was issued, however, the advice of the Board of Trade was sought. The Board of Trade considered that these vessels could be used most effectively to convoy the trade to the West Indies and this became the established practice.[37]

It was represented to the Admiralty Council in 1702 that the needs of Virginia and Maryland were such that additional stationed ships ought to be assigned to them. Governor Blakiston was in England and was requested to appear before the Council. In his opinion Maryland needed only a sloop with six men while Virginia would be adequately protected by a fifth rate.[38] Thereafter, during the war, Virginia and Maryland were considered as a single station and it was customary to keep three or four fifth or sixth rate ships there.[39] English merchants trading to New England appeared before the Council to request that vessels larger than the usual fifth rate should be assigned to the station at Boston. The Council, in a sharp reply, stated that if

[35] Clowes, Vol. 2, pp. 372–3, 502.
[36] Headlam, 16 June, 1702, p. 392.
[37] Headlam, 11 January, 1703, p. 111.
[38] *Adm.* 3.17, 23 September, 1702.
[39] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 5, paragraph 1985: *Ibid.*, Vol. 6, pp. 26 ff.: *S. P. D., Naval*, 8: Headlam, 2 January, 1711.

they would foster the production of naval stores in New England there would always be many large vessels there.[40]

The most annoying colonial question which confronted the Admiralty Board during this war was the relationship between naval officers and colonial governors. As early as June, 1702, a Secretary of State recalled, in a letter to the Admiralty Council, that in the previous war there had been many complaints because captains of stationed ships had refused to follow the directions given by colonial governors. He recommended that naval officers in America should be so instructed that this would not happen again.[41] The Council acted upon this suggestion and throughout the war naval officers on colonial stations were specifically ordered to place themselves under the direction of governors.[42] In spite of these exact instructions there were bitter misunderstandings and the instructions were by no means obeyed in every case. In 1707, the Council ruled that Captain Fane at New York was right in refusing to allow the governor to appoint an officer to his ship but, on the other hand, the governor was right when he suspended the captain for disobedience.[43] In 1711, Governor Lowther of Barbados was notified that he had no right to try a naval officer and that he was in the wrong in a long sustained dispute with the naval officers stationed there.[44] In 1715, the Board referred to the many quarrels which had taken place during the war.[45] From these quarrels as well as from other sources, the Board was compelled to face the fact that some officers were inefficient and others were not suited to meet the temptations and difficulties of colonial service. The most notable example of this was Captain William Kerr who, for a time, was in command of the West Indies squadron. He demanded payments in money from the merchants for protecting their vessels and it was charged that his men received bribes

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[40] *Adm.* 3.20, 13 March, 1705.
[41] *Adm.* 1.4316, 22 June, 1702.
[42] *Adm.* 3.24, 21 July, 1710: *C. O.* 324.32, 25 June, 1713: *S. P. D., Naval,* 13: *Adm.* 2.48, 9 March and 19 March, 1714: *S. P. D., Naval,* 14, 26 March 1715.
[43] Headlam, 30 April, 1707, p. 424.
[44] *S. P. D., Naval,* 10, 2 November, 1711.
[45] *S. P. D., Naval,* 14, 20 March, 1715.

from illegal traders and the enemy. When these abuses became known Kerr was dismissed.[46]

Considered as a whole, the War of the Spanish Succession was marked by the consideration given to the American colonies as a factor in the general naval situation. The West Indies maintained their earlier importance and the colonies to the northward increased in significance. The number of cruising squadrons detailed to northern waters indicated this fact. In 1702, Captain John Leake was stationed with a small squadron off Newfoundland and he worked havoc among the French.[47] In 1703, Vice Admiral Graydon cruised northward from the West Indies and he remained for a time at Newfoundland. In 1710, a British fleet took part in the capture of Port Royal. In 1711, Rear Admiral Sir Hovenden Walker commanded a fleet which cruised between Boston and the Gulf of St. Lawrence from June to October. This was a powerful naval force but a proposed attack upon Quebec failed to materialize.[48] In 1704, when the total number of vessels in the royal navy was 261 there were nineteen in American waters.[49] In 1710, forty-six vessels with ten thousand men were engaged in colonial defence and convoy service.[50] In 1711, thirty-five were stationed in colonial waters or were sailing thence.[51] After 1709, British losses were reduced to a low point and the close of the war saw all branches of English trade secure and the colonies in America in a strong position.[52]

As was the case after the year 1697, the War of the Spanish Succession was hardly brought to a close before pirates became a menace in colonial waters. In fact they began to appear as early as 1709 when the British navy had been successful in driving French and Spanish privateers and merchantmen from the sea. From the Bahama Islands, in 1706, a customs officer reported that the war would no sooner be over than West Indian

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[46] Clowes, Vol. 2, pp. 508–9: *L. J.*, Vol. XVIII.
[47] Clowes, Vol. 2, p. 501.
[48] Clowes, Vol. 2, pp. 502 ff., 520, 527.
[49] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 5, paragraph 1985, 21 February, 1704. See also p. 474.
[50] *S. P. D., Naval*, 8, January, 1710.
[51] *S. P. D., Naval*, 9, 2 January, 1711.
[52] Clowes, Vol. 2, pp. 416–7: Mahan, *op. cit.*, p. 224.

waters would be infested.[53] In 1709, it was mentioned officially that pirates were operating from the African coast.[54] Virginia merchants and planters petitioned, in 1713, for additional naval security, for they feared that the close of the war would fill colonial waters with pirates. Before this petition had been received, however, the Admiralty Board had ordered an additional vessel to Virginia.[55]

The fear that pirates would become numerous was justified by the events. Many reports, petitions and memorials revealed to the Board that in the West Indies, the Carolinas and as far north as Virginia and Maryland piracy was on the increase and merchantmen were suffering. It was believed by some that the Bahama Islands were being used by the pirates as a base from which to carry on their operations.[56] It was even represented "that the pirates . . . are grown so numerous that they infest not only the sea near Jamaica but even those of the Northern Continent" and if immediate relief is not furnished for the trade "it will not only be obstructed, but in imminent danger of being lost."[57] The Admiralty Board recognized that a real danger existed and orders were issued maintaining ships at all the stations. Naval officers were ordered to cooperate with the colonial governors and to cruise constantly for the protection of trade.[58] Although the number of vessels in colonial waters, in 1716, was less than in wartime yet, in that year, more than twelve, with 274 guns, were sent out.[59] In 1717, when the situation was most desperate the naval forces in American waters were materially increased and officers were further instructed to cruise.[60]

The policy of strengthening the naval forces in the colonies

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[53] Headlam, 1706, p. 114.
[54] *C. O.* 323.6, 1709.
[55] *S. P. D., Naval*, 12, 24 June, 1713: *S. P. D. E. B., Naval*, 217, 23 June, 1713: *C. O.* 324.32, 25 June, 1713.
[56] Godwin Pamphlet, No. 465: *S. P. D., Naval*, 16, 19 January, 1717: *S. P. D. E. B., Secretary Letters*, 120, 2 November and 29 November, 1716, 20 February, 1717: *S. P. D., Naval*, 16, 1 April, 1717: *S. P. D. E. B., Naval*, 218, 31 August, 1717: *S. P. D. E. B., Naval*, 221, 23 November, 1719.
[57] *C. O.* 324.10, 27 May, 1717: *C. O.* 323.7, 27 May, 1717.
[58] *S. P. D., Naval*, 16, 1 April, 1712: *Adm.* 2.48, 28 June, 1715.
[59] *S. P. D., Naval*, 15, 2 May, 1716.
[60] *Adm.* 3.31, 14 June, 1717.

was rewarded with a measure of success for after 1717 piracy began to decline. This was hastened by a permanent Act of Parliament of 1721, based upon the temporary Act of 1700 which has already been explained.[61] As was the case in 1700, a proclamation was issued offering a pardon to pirates who would give themselves up, commissions were appointed to try pirates and naval officers were encouraged to make captures. By 1722, it was reported that pirates had almost disappeared from colonial waters.[62] Concerning the operation of this law until the end of the period in 1763, a brief statement will suffice. The Admiralty Board supervised carefully the execution of the law. In 1723, at the Board's request, the Secretary of State ordered that the records of all trials before the special commissioners should be sent promptly to England for admiralty review.[63] The accession of George II necessitated the renewal of all commissions and this was done for the colonial piracy commissions upon the recommendation of the Board.[64] In 1748, after the close of the War of the Austrian Succession, there was a fear that pirates might again become numerous, and the Board recommended that the commissions should be renewed. The Privy Council replied that the commissions were still in force and that it was only necessary that the Board send to the colonies instructions for trying pirates.[65] Following the accession of George III the commissions were renewed upon the advice of the Board.[66]

Hardly had the problems relating to piracy been successfully settled when it appeared that Great Britain would be involved in a war with Spain. As a result the Admiralty Board was compelled to maintain a strong naval force in colonial waters until after 1730. In 1727, there were twenty-five vessels carrying over six thousand men and 750 guns assigned to colonial duty.[67] By 1737, however, this force had been reduced to seventeen,

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[61] 6 George I, c. 18.
[62] *S. P. D., Naval*, 17II, 3 August, 1722.
[63] *C. O.* 324.35, 11 July, 1723.
[64] *Adm.* 7.339, 15 October, 1728.
[65] *Adm.* 1.5163, 9 December, 1748: *A. P. C., Colonial*, Vol. 4, p. 24, 28 November and 9 December, 1748.
[66] *A. P. C., Colonial*, Vol. 4, p. 485, 2 January, 1762.
[67] *S. P. D., Naval*, 18II, 1727.

with hardly more than 2,500 men and four hundred guns.[68] During this period of comparative peace only one important complaint relating to the defence of the colonies was brought before the Board. It had frequently been alleged, even during the War of the Spanish Succession, that captains neglected their duties in order to engage in trade. At last, in 1718, certain merchants appeared before the Board in order to make a formal complaint. The Board requested that definite instances be cited and that the names of guilty officers should be revealed but the merchants were unable to comply. Thereupon the Board informed the merchants that all naval officers were definitely instructed to trade in nothing but gold and jewels. If the merchants should ever discover definitely that these instructions were not being obeyed they should notify the colonial governors who supervised the actions of naval officers.[69] In 1738, the Board was convinced that certain royal officers were trading in provisions. Thereupon it sent special orders to all captains stationed in America, expressly forbidding this practice.[70]

The war with Spain which broke out in 1739 and which later became a part of the more general War of the Austrian Succession taxed the ability of the Admiralty Board and the strength of the British navy. A committee of the Privy Council often gave orders relating to naval affairs without the advice of naval officers and without consulting any member of the Admiralty Board.[71] This was doubtless true because the Board, at times, displayed a lack of efficiency but the practice produced a dangerous form of divided control. Another serious weakness lay in the condition of the fleet, since in May, 1739, there were 124 ships of fifty guns or more, of which forty-four were admittedly unfit for service.[72]

The number of vessels in colonial waters had fallen to thirteen by the end of 1738 but the Board hastily dispatched reenforcements and by the end of 1739 there were twenty-six stationed

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[68] *S. P. D., Naval*, 221, 1737.
[69] *Adm.* 3.31, 9 April, 1717.
[70] *Adm.* 3.42, 21 January, 1738.
[71] Richmond, Vol. 1, Introduction, p. XIX.
[72] Richmond, Vol. 1, p. 14.

ships.[73] After 1739, an active squadron with headquarters at Jamaica was regularly maintained in the West Indies. Numerous engagements were fought and attempts were made to seize the possessions of Spain and France. The most noteworthy example was in 1741 when a fleet of fifty vessels, the greatest that had been assembled in America, was placed under the command of Admiral Vernon in an effort to take Cartagena.[74] After France became involved in the war, in 1744, the Gulf of St. Lawrence was the scene of great activity. Louisbourg was taken in 1745 and thereafter an active squadron, frequently referred to as the North American fleet, was maintained in that quarter.[75]

While the more important engagements of the war were being fought the Admiralty Board increased the number of stations in the colonies and added to the strength of their defence. In the West Indies, stationed ships were assigned to Jamaica, Barbados and the Leeward Islands. A new station was created to include the Bahama Islands, North and South Carolina and three to six vessels were maintained here. The Virginia station included Maryland and two or three ships were deemed adequate. At times one small ship was sent up the Delaware River to Philadelphia. The usual stations at New York and Boston were maintained and they increased in importance as the war progressed. As has been pointed out, Newfoundland became of such importance that an active squadron was maintained there.

Colonial governors were not always satisfied with the provisions for their safety which were made by the Admiralty Board. In 1741, a letter from the governor of Massachusetts stated that Boston had been without a naval vessel for several months and the danger both to the colony and trade was very great.[76] Governor Bull of South Carolina requested greater protection for his colony but it was the opinion of the Board that the two sixth rate vessels already there provided adequate security.[77] When the governor and council of Barbados were petitioned, in 1744,

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[73] Richmond, Vol. 1, pp. 5 ff.
[74] Clowes, Vol. 3, p. 67.
[75] Clowes, Vol. 3, p. 109.
[76] *Adm.* 1.3817, 19 January, 1741.
[77] *S. P. D., Naval*, 24I, 10 June, 1741.

for additional vessels, the Board replied that the fourteen already there were adequate and ought to be used actively against the enemy.[78] Governor Shirley of Massachusetts stated in 1745 that New England was in grave danger because the coast was poorly defended. The Board hastened to assure him and Governor Clinton of New York that steps were being taken to provide adequate safety.[79]

The Admiralty Board, in the course of the war, gave consideration to numerous problems in addition to those which might be considered as routine in nature. A few of these may be mentioned as typical of colonial business. There were instances of friction between governors and naval officers and each case which came before the Board was carefully examined before it was acted upon.[80] In the particular case of Captain Frankland it was found that the naval officer was at fault. Governor Glenn reported that, contrary to his orders, Captain Frankland had taken his ship off her station and as a result South Carolina had been left defenceless. The Board ordered that the captain should receive a reprimand and that the governor should be notified of this action.[81] A careening hulk was deemed necessary at Boston and the Navy Board was ordered to provide one at the least expense.[82] The governors of Pennsylvania, New York and Massachusetts protested, in 1744, that the customary practice of sending stationed ships to cruise during the winter in the West Indies left them defenceless at a dangerous season. This was especially true, they pointed out, because the ships were slow in returning and were not fit for duty until they had been repaired after the long voyage. The Board decided that henceforth stationed ships, north of the Carolinas, would not be required to sail to the West Indies and that they would receive all orders for cruising from the officer commanding the North American fleet.[83]

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[78] *Adm.* 7.340, 23 January, 1744. There were two third rate, three fourth rate, three fifth rate, and two sixth rate vessels and, in addition, four small ones of less consequence.
[79] *Adm.* 3.49, 4 January, 1745.
[80] *Adm.* 7.298, 26 July, 1740.
[81] *Adm.* 3.48, 24 August, 1744.
[82] *Adm.* 3.47, 10 September, 1743.
[83] *Adm.* 1.3817, 1 October, 1744: *Adm.* 3.50, 22 April, 1745.

Two additional examples of the Admiralty Board's interest in colonial affairs may be mentioned. Before the middle of 1745, it was learned that there was "a great buzz of activity on the French west coast" and it was feared that this indicated an attempt by the French on the West Indies. The Board notified Admiral Vernon of this and ordered him to do all in his power to thwart the French and protect the colonies.[84] In 1746, it was reported to the Board that the 4½ per cent duty on rum, a tax peculiar to the West Indies, was being collected on all rum supplied to royal vessels in Barbados. The Board protested to the Lords of the Treasury who in turn referred the matter to the Commissioners of Customs. Robert Dinwiddie, Receiver-general of the Southern Department of North America, was required to submit a report and he argued in favor of the practice. As a result the Treasury Board reported to the Admiralty Board that the tax was legally levied and would be collected.[85]

There was scarcely a pause in naval activities in American waters after the Treaty of Aix-la-Chapelle in 1748. The French were busy refitting their navy and this was especially obvious in the West Indies.[86] The Admiralty Board was no less active and much was done to maintain the colonies in a state of defence. In 1752, there were eighteen vessels with over two thousand men on regular stations.[87] A careening place which had been set up in South Carolina was found to be suitable for only smaller ships and the Board ordered the Navy Board to prepare a place in which the largest men-of-war which went to America could be careened.[88] The Board issued instructions to govern the purchase of supplies for fitting and repairing vessels in the colonies.[89] The amount of material used in the next two years for this purpose was enormous and the Board called this to the attention of Commodore Cates. He was required to report whether it was because of poor workmanship or natural wear in America.

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[84] *Adm.* 2.1331, 7 August, 1745.
[85] *Treas.* 1.320, 15 and 25 November, 1746: *Treas.* 1.325, March, 1747.
[86] Clowes, Vol. 3, pp. 138–9.
[87] *S. P. D., Naval*, 35, 13 April, 1752.
[88] *Adm.* 2.510, 27 July, 1749.
[89] *Adm.* 3.62, 29 July, 1752.

Above all he was directed to reduce all expenditures for this purpose to a necessary minimum.[90]

The general arrangement of stationed ships which the Admiralty Board had maintained during the War of the Austrian Succession was not changed during the Seven Years' War. Additional naval security, however, was enjoyed by the colonies since the Board kept several active squadrons or fleets in American waters. To the customary West Indies squadron with headquarters at Jamaica was added a second with headquarters at the Leeward Islands. In the Gulf of St. Lawrence region, one squadron was regularly stationed and there were times when other strong forces were operating there.

While the war was being waged the Admiralty Board displayed the greatest care in supervising the activities of officers in command of stationed ships. The particular duties of each station were outlined in instructions and, as had been the case formerly, naval officers were subject to the command of colonial governors. In addition, each officer commanding at a station was required to make a periodic report and submit his journal to the Board.[91] When there were complaints against a naval officer the Board acted with great vigor. An example of this was the case of Admiral Frankland. The Governor of the Leeward Islands brought complaints against him and insisted that his services were of no value. The Board directed him to answer the governor's charges in a particular manner and to support his answer by his journal and an account of all his activities. Until the case could be settled Frankland was specifically ordered to show the greatest zeal in annoying the enemy, whenever possible, and in protecting trade.[92]

Almost all the appeals relating to naval matters which came from the colonies to the Board contained requests for additional protection. Toward all these the Board displayed the greatest solicitude. When, in 1756, it was learned that the merchants considered that the West Indies were in a particularly defenceless state, the Board took occasion to assure them that nothing

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[90] *Adm.* 3.63, 4 September, 1754.
[91] *Adm.* 2.78, 18 March, 1757.
[92] *Adm.* 3.65, 26 April, 1757.

would be neglected in an effort to make these colonies secure.[93] Somewhat later the governors of North and South Carolina represented the dangers which beset their colonies. Governor Lyttelton of South Carolina, seconded by the merchants of the colony, set forth that the annual exports, valued at £200,000 sterling, would be gravely endangered if royal vessels were not sent immediately.[94] Governor Dobbs of North Carolina was joined by his council in reporting that the colony was in a defenceless state and that two enemy vessels had actually destroyed shipping in the Cape Fear River. They were aware that naval officers disliked being stationed there but they pleaded for one ship at least.[95] By way of reply the Board explained that North and South Carolina were considered as being parts of the same station. To satisfy the needs of both, additional ships were already proceeding to South Carolina.[96] When the governors of New York and Pennsylvania complained of inadequate protection the Board instructed them to apply to the rear admiral in command of the North American fleet.[97] In 1762, Governor Moore of South Carolina wrote, "I have no Reason to suppose that this Province, . . . will at any time be disregarded, yet I think it my Duty to Inform you that when the *Dolphin* leaves us . . . this whole coast between Georgia and Virginia will be without one of his Majesty's Ships . . . ." Immediately the Board ordered H. M. S. *Success* to be victualled and to proceed to South Carolina with the usual instructions for that station. At the same time Governor Moore was notified of this action.[98]

The problems the Admiralty Board had to face were made easier by the sweeping naval victories won by the British after 1759. The power of France and Spain was destroyed and most of their possessions were lost. As a result the security of British colonies and trade were unquestioned before the war was brought to a close.[99]

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[93] *Adm.* 3.64, 27 May, 1756.
[94] *Adm.* 1.3818, 19 July, 1756.
[95] *Adm.* 1.3818, 3 March, 1757.
[96] *Adm.* 2.520, 17 May and 12 August, 1757.
[97] *C. O.* 5.1068, 31 January, 1759.
[98] *Adm.* 1.3819, 23 February and 10 June, 1762.
[99] Clowes, Vol. 3, pp. 167, 205–6, 233, 742–3.

V

The Problem of Convoys

The second important wartime problem which brought the Admiralty Board into a close relationship with the American colonies arose out of the practice of convoying trade. The royal navy, in addition to its many other duties, furnished convoys for the protection of English commerce. This was particularly true in the eighteenth century when all branches of trade were expanding and when the trade relationship between England and the colonies was considered of paramount importance. As it has been pointed out, the naval defence of the colonies and the convoying of merchant vessels were closely related and in fact, it might be considered that there was but one problem. However, the active interest displayed by merchants and officials of the government in the protection of commerce, the political and economic importance attached to colonial trade and the vast amount of money invested in it tended to obscure the fact that the security of the colonies was of primary importance. Officials in the colonies and the trading classes in America seemed to understand this, but in England a much more active interest was displayed in the immediate protection of colonial commerce than in the broader problem of the colonies including the trade which was carried on with them.

The wars of the eighteenth century had a marked influence upon British commerce. One of the regular naval operations was a sustained attack upon merchant vessels and in this respect England worked havoc with her enemies but in turn suffered enormous losses. In fact British commerce was particularly subject to attack not only because of its great volume and numerous branches but because of the distance to the American continent and the islands of the West Indies. The enemies of England took advantage of every vulnerable point and not only used their fleets but, in addition, commissioned privateers whose principal object was the seizure of merchant prizes.

From the point of view of the Admiralty Board in its effort to

furnish convoys, colonial commerce was divided into four distinct branches. The West Indies trade was probably considered the most valuable and, certainly, during the War of the League of Augsburg and the War of the Spanish Succession was furnished the greatest possible protection. The trade with the middle colonies, including Pennsylvania, Virginia, Maryland and later the Carolinas was viewed as a second branch, while the third included New York, the New England colonies and, later, the general region of the Gulf of St. Lawrence. In addition to these three general branches, commerce between colonies, especially that between the West Indies and the ports to the northward, was of such importance that it merited protection. As will appear, the climate and products of each of these general colonial areas was such that different convoy arrangements had to be made to suit the existing needs of each.

It would naturally be considered that to arrange all convoy matters was a duty of the Admiralty Board. In general this was true yet certain exceptions must be noted. In the first place, the Privy Council often exercised great influence over convoy arrangements. As has been stated, the Privy Council was superior to the Admiralty Board and exercised the unquestioned right of issuing orders relative to all admiralty affairs. Relative to convoys this right was exercised quite freely during the War of the League of Augsburg for throughout these years orders dealing with specific ships and convoys as well as general directions were given. In such instances the Admiralty Board, with the aid of the Navy Board and the Commissioners of Customs, put the orders into execution. During subsequent wars the Council played a less direct part in dealing with convoys although it is true that from time to time specific instructions were issued. Secretaries of State, also, displayed a marked interest in convoy arrangements and frequently gave the Admiralty Board directions concerning them. This was particularly true during the Seven Years' War when, for example, William Pitt exercised great power and, presumably, represented the will of the King. William Pitt, however, was only following a practice which had been begun at an earlier date. The final exception, worthy of note, to the general competence of the

Admiralty Board was the instance of the Board of Trade. From the time of its creation the Board of Trade was actively engaged in considering colonial problems. As a result the question of convoying merchant vessels constantly came up. The attitude of the Board of Trade, however, was that of giving advice and suggestions rather than directions and consequently its services were often of the greatest value.

It is not necessary to utter any strictures upon these relationships which actually existed for although they resulted in inefficiency, this was typical of the British government of the time. It is true, the Admiralty Board was hampered at times and often confused but, on the other hand, it was frequently composed of weak men who needed assistance. One fact, however, remains. When there were complaints, when convoy arrangements were called into question and when commerce had sustained losses it was the Admiralty Board that was always called to account.

It will not be hard, perhaps, to understand the principal difficulties which the Admiralty Board had to face in an effort to provide convoys for all branches of colonial trade. That divided control which has just been mentioned was one of the chief hardships. The length of the voyages and the impossibility of exercising direct control over men-of-war after they had reached colonial waters tended to nullify the best laid plans. Merchants themselves, for the safety of whose goods all convoys were provided, proved to be most difficult to satisfy. They petitioned ceaselessly for different arrangements, for the postponement of sailing dates, for special convoys and special privileges. Habitually they contended that the particular branch of the trade they were interested in was the most important that could be considered. At sea, merchant vessels failed repeatedly to obey the signals of the officer commanding the convoy, with the result that frequent inexcusable losses occurred. Add to these difficulties the fact that enemy men-of-war and privateers haunted the sea and colonial waters in search of an unprotected English merchant vessel and the magnitude of the Admiralty Board's task becomes apparent.

In discussing the Admiralty Board's handling of the convoy problem relating to the colonies one important fact must be

borne in mind. In general the Admiralty Board assumed the attitude that every measure adopted for the naval defence of the colonies served indirectly, at least, to protect commerce. Stationed ships and active squadrons in colonial waters were instructed to guard carefully all types of colonial trade. When royal vessels were despatched to America they were ordered, if it was feasible, to escort merchant vessels. Men-of-war returning to England from the colonies were used as convoys whenever it was possible. In addition to the comparatively large number of royal vessels which were used in this manner, special convoys were arranged and a regular convoy system was eventually established.

When England became involved in the War of the League of Augsburg in 1689 the Privy Council was convinced that immediate convoys were necessary, and at once specific orders were issued to the Admiralty Board.[1] These orders were interpreted as emergency measures and, later, after conferring with the Lords of Trade, a committee of the Privy Council, the Admiralty Board appointed several vessels as a convoy for the merchantmen preparing to sail for Virginia and Maryland.[2] In addition the Board announced: "Notice is hereby given, that the squadrons designed for . . . (the) West Indies will depart very suddenly, therefore all merchant ships that are intended to go under their convoy should repair to the Downes and Spithead to be in readiness to sail with them, otherwise they will proceed without them."[3] This squadron was delayed but finally sailed from Plymouth with a great merchant fleet.[4]

In the following year the Admiralty Board endeavored to announce plans for convoys somewhat in advance. Two royal vessels were ordered to leave England in October with the merchantmen bound for Virginia and Maryland and they were to return, as convoys, in the spring of 1691. In like manner one vessel was ordered to New York. Merchant vessels sailing to

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[1] *Adm.* 1.5141, 21 February, 7 March, 21 September, 1689: *A. P. C., Colonial*, Vol 2, p. 148, 21 November, 1689.
[2] *A. P. C., Colonial*, Vol. 2, p. 148, 28 November, 1689.
[3] *Adm.* 2.379, 18 December, 1689.
[4] Clowes, Vol. 2, p. 463. The departure was made on March 8, 1690 and Barbados was reached, May 11.

the West Indies were to proceed as far as possible with the straits convoy. Then one man-of-war was to be detached from this convoy and was to accompany them to West Indian waters. In the spring of 1691 Captain Wright, the officer commanding the active squadron in the West Indies, was to provide a return convoy by sending one ship from Barbados, one from Jamaica and one from the Leeward Islands.[5]

Convoy arrangements during the years immediately following were similar to those made in 1690. Letters and orders from the Privy Council and the minutes of the Admiralty Board bear mute testimony to the interest displayed in convoy matters and the amount of time the Board spent in considering them.[6] As time went on the Board followed the practice of appointing royal vessels for different convoys, setting the dates of sailing and notifying the merchants well in advance in order that they might assemble and sail without delay.[7] The arrangements regularly included convoys to the West Indies, Maryland and Virginia, and New York and New England. For example, the announcement for 1691, in addition to a convoy to the West Indies similar to that of 1690, provided that two men-of-war should convoy all the merchantmen bound for the mainland colonies to Maryland and Virginia. Then one of these royal vessels should proceed to New York and the other to New England. Later these two vessels were to return as convoys to England by way of Virginia and Maryland.[8]

It was evident to the Admiralty Board, from the first, that providing convoys would be difficult and that it would be impossible to satisfy the particular requests of all those engaged in colonial commerce. Naval officers commanding convoys did not always perform their duties and in 1693 a flagrant example of this caused the Board to dismiss a captain.[9] As early as 1692,

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[5] *Adm.* 1.5140, 18 September, and 1 October, 1690: *A. P. C., Colonial*, Vol. 2, p. 173, 18 September, 1690: Fortescue, 17 and 21 November, 1 October, 1690.

[6] Letters and orders from the Privy Council are to be seen in *Adm.* 1.5140 ff., and the minutes in *Adm*,. 3.1 ff.

[7] *Adm.* 2.171, 18 August, 1691.

[8] *Adm.* 2.381, 15 October, 1691: Fortescue, 12 and 15 December, 1691.

[9] Fortescue, 11 October, 1693, p. 181.

difficulties with merchants began. In that year the merchants trading to Virginia and Maryland insisted upon long postponements. These merchants appealed in turn to the Privy Council, the Admiralty Board and the Treasury Board in an effort to gain their point. Finally, the matter was left to the discretion of the Admiralty Board and a postponement was arranged.[10] Merchants trading to Jamaica and the Barbados were particularly difficult to satisfy and only after their opinions were carefully heard was it possible to make arrangements to suit them.[11]

Any simple statement of the petitions, memorials, postponements and changes would fail to indicate the confusion and misunderstandings which arose as a result of the Board's dealings with merchants. The extra and additional convoys which the merchants requested, many of which, in fact, were granted, were often ill advised and it was a drain upon the resources of the navy to furnish those which appeared to be absolutely necessary. As has been mentioned, merchants, in an effort to obtain their desires, appealed first to one authority and then to another and when convoys were announced merchant vessels were not always assembled promptly. There were numerous protests from the colonies and not infrequently it seemed that merchants endeavored to manipulate convoys for the express purpose of securing some special advantage.[12]

In spite of the efforts made by the Admiralty Board to protect commerce in an adequate manner during this war it cannot be concluded that this was successfully accomplished. A number of investigations, which were made by committees of the House of Lords, reveals that great dissatisfaction existed and that the navy proved to be unequal to its manifold task. The first of these investigations was made in 1693 when a committee of the House of Lords considered the general failures of the navy.[13] The question of convoys naturally arose since charges were brought against the navy on that score but the committee

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[10] *A. P. C., Colonial*, Vol. 2, p. 232, 13 October, 1692: *Adm.* 1.5142, 13 October, 1692.

[11] *Adm.* 1.5143, 6 November, 1693.

[12] *Adm.* 1.5141, 13 October, 1692: *Adm.* 1.5143, 13 April, 1693: *Adm.* 7.333, October, 1695: *A. P. C., Colonial*, Vol. 2, pp. 190–1, 14 November, 1695.

[13] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 2, paragraph 765.

made no severe criticism of the convoy arrangements which had been made by the Board.

Again, in 1695, a committee of the House of Lords gave special consideration to the naval conduct of the war and this proved to be a specific investigation of naval miscarriages and the condition of trade.[14] It was shown that enemy efforts to inflict losses upon English commerce had been particularly successful after 1693 and colonial trade had suffered severely. Colonial merchants and English merchants interested in colonial trade made as strong a case as possible against what the Admiralty Board had done to provide security for their ships. They stated that, among others, those interested in New England trade had lost £114,000, those interested in Pennsylvania trade had lost £11,800 and those engaged in the West Indies trade had lost more than £500,000. They further asserted that they had been diligent in bringing their needs to the attention of the Admiralty Board with the result that wholly inadequate convoys had been furnished and losses had been appallingly great.

The committee of the House of Lords directed the Admiralty Board to present its case. In reply the Lords of the Admiralty contended that they had been faithful in carrying out the orders of the Privy Council and that they had done all that was possible with the ships that were available. They admitted that often it was impossible to grant every request the merchants made because a sufficient number of ships was not available. Yet, in spite of this, throughout the period of heaviest losses they had maintained an average of sixty vessels each month cruising and convoying. Furthermore, they asserted that the merchants, by delays and postponements, had brought many of the losses upon themselves. Too, merchant vessels at sea had frequently refused to obey the signals of the naval officer commanding the convoy and losses had resulted. Finally, the Board contended that most of the losses had been due to the natural hazards of the sea or to the unexpected appearance of the enemy in such force that no reasonable convoy protection could have availed.

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[14] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 2, paragraphs 886, 959.

This investigation, while producing no definite results, revealed several important facts relative to the convoy problem and the hazards of commerce. There can be no doubt that enormous losses were being suffered. In fact, at a later date, it was stated without question that the English lost four thousand ships in the War of the League of Augsburg.[15] It could not be asserted, however, that the Admiralty Board was wholly to blame for the losses. The lack of cooperation on the part of the merchants was one important factor among many others. The attitude of the merchants was natural but unreasonable for they contended always for their own point of view without taking into account their own failures. The charge that convoys had not been used effectively was more damaging than the charge that a sufficiently large proportion of the ships of the navy had not been used, for sixty had been assigned solely to the protection of commerce out of a total naval strength of less than three hundred vessels.[16]

During the last two years of the war, much fewer losses were suffered by the merchants who were engaged in colonial trade. This was due not only to the Board's arrangements for convoys but also to the much more important fact that the English navy was generally successful against France. Before 1695, the French navy was defeated and exhausted and thereafter French privateers were gradually reduced in number and effectiveness.[17] In fact, by the end of the war England had gained the reputation of being the nation which most successfully protected its commerce.[18]

It cannot be considered that, by the end of the War of the League of Augsburg, the arrangements which were made periodically for the protection of colonial commerce had developed into a definite convoy system.[19] However, the beginnings of a system may be detected, since similar orders for the different branches of trade were given year after year. When, in 1695,

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[15] *L. J.*, Vol. XVIII, p. 410.
[16] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 5, p. 474.
[17] Clowes, Vol. 2, pp. 360–1, 416–7.
[18] Mahan, *The Influence of Sea Power Upon History*, p. 224.
[19] The term system is used here to describe definite, well-defined, publicly announced arrangements which were well established and which functioned regularly in the interest of every branch of the colonial trade.

the Privy Council directed that convoy arrangements be made for the year 1696 the Admiralty Board, in complying, ordered "That the usuall convoys be Provided for the severall forein Trades."[20]

The "usual convoys" that were contemplated by the Admiralty Board in 1696 can be easily determined as well as the customary practices pertaining to them. It was arranged that one principal convoy should go to the West Indies in the autumn. Upon arrival in the West Indies, merchant vessels were conducted to their particular destinations, the chief trading centers being the Leeward Islands, Barbados and Jamaica. After these merchantmen were seen safely to port the ships of the navy which had convoyed them were subject to the naval officer commanding in the West Indies and were either united to his squadron or assigned to stations. In the early spring, following, the officer commanding in the West Indies designated certain vessels to convoy the merchant fleet from the West Indies to England. All the arrangements for this movement were in his hands and he usually appointed those ships and captains who had been longest in the West Indies, in order that they might return home.

An autumn convoy, also, was appointed to proceed to Virginia and Maryland. Ships which had been stationed at these colonies returned to England with the trade the following spring. It had become the practice by 1696 to provide convoys to New York and New England as often as they were needed. To provide security for the trade between the more northern colonies and the West Indies the ships stationed at New York and Boston for the defence of these colonies were ordered to convoy this branch of the trade during the winter.[21]

During the short period of peace which followed the Treaty of Ryswick certain convoys were found necessary because of

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[20] *A. P. C., Colonial*, Vol. 2, p. 188, 20 June and 12 September, 1695.

[21] *Adm.* 2.21, 11 February, 1695: Fortescue, 29 July, 1695, p. 550: *Adm.* 7.333, October, 1695: *A. P. C., Colonial*, Vol. 2, pp. 290–1, 14 November, 1695: Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 2, paragraph 959: *Adm.* 2.21, 7 May, 1696: Fortescue, 18 September, 1696, pp. 122–3: *Adm.* 1.5146, 1 October, 1696: Fortescue, 22 October, 1696, pp. 182–3, 23 January, 1697: *A. P. C., Colonial*, Vol. 2, p. 291, 11 March, 1697, p. 313, 17 May, 1697: Fortescue, 14 September, 1697, p. 611: *Adm.* 2.24, 20 September,1697: Fortescue, 21 January, 1698, p. 93.

the presence of pirates in colonial waters and elsewhere. The arrangements for these were by no means as elaborate as in time of war. As had been the case since 1696, the Admiralty Board sought the advice of the Board of Trade relative to convoy matters.[22] Several problems arose and numerous petitions came directly to the Admiralty Board or by way of the Board of Trade.[23] In 1700, the question arose as to the best use which could be made of the royal vessels stationed for defence at New York and Boston. As a result the Board empowered the governors of New York and Massachusetts to send them as convoys through the winter to the West Indies if it appeared clear that this would be advantageous.[24] An additional practice of importance was adopted during these years of peace. The Board required periodic reports from the chief English seaports in an effort to determine how many merchant vessels were preparing to sail for the colonies. This information proved to be of value.

The beginning of the War of the Spanish Succession in 1702 made apparent the necessity of providing, once again, an adequate number of convoys for the protection of all branches of trade. The activity of the French and Spanish caused great apprehension among English and colonial merchants. They petitioned the Board not only for particular convoys but for adequate protection throughout the war.[25]

That British commerce was not adequately protected during this war will shortly appear and it is necessary to refer briefly to one of the principal reasons for this. It must be recalled that in 1702 the Admiralty Board was abolished and its functions and duties were discharged by Prince George as Lord High Admiral and a small Council of his own choice.[26] This proved to be a very poor arrangement because the Prince and some of his associates were weak men while other members of the Council

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[22] Fortescue, 24 September, 1696, pp. 140–1: *Adm.* 1.5146, 1 October, 1696: Fortescue, 5 November, 1696, p. 192, 23 January, 1697, p. 316: *A. P. C., Colonial*, Vol. 2, p. 313, 17 May, 1697: Fortescue, 14 September, 1697, p. 611, 21 January, 1698, p. 93.

[23] *Adm.* 1.5148, 29 January, 1702.

[24] *Adm.* 2.26, 10 January, 1700.

[25] *Adm.* 2.5148, 19 January, 1702: *A. P. C., Colonial*, Vol. 2, 29 January, 1702: *Adm.* 3.17, 9 and 23 October, 3 November, 1702.

[26] See chapter I.

proved to be irresponsible and utterly lacking in public spirit. The affairs of the navy languished under the direction of these men and it was only after British commerce had sustained heavy losses that the Admiralty Board was restored. It is true, however, that the Council by no means neglected the question of convoys.[27]

In the first year of the war, arrangements were made for particular convoys as the need arose. In the following year the general practices, relative to convoys, which had obtained during the last years of the War of the League of Augsburg, were followed. Consequently, in December, 1702, orders were issued providing for the security of trade with the West Indies, the middle colonies and those to the northward.[28] At the same time a violent controversy arose between two factions of the merchants who were interested in the Virginia and Maryland trade.[29] The independent London merchants requested a convoy in July, although they did not oppose the regular autumn or early winter convoy. The factors and less important merchants, chiefly of the west ports, felt that the July convoy would be unfavorable and consequently they preferred the single autumn convoy. The Admiralty Council considered the opinions of all who were interested and, in addition, sought the advice of the Board of Trade. It was finally decided that for the year 1703 it would be wise to send out two convoys, one in January and one in July. The royal vessels sent out in January should return to England as convoys in April while those sent out in July should spend the winter in a return voyage to the West Indies after which they should leave Virginia in April, 1704, in order to bring the merchant fleet to England. The Privy Council accepted these arrangements and ordered that they should be carried out. It was further ordered that no merchant ships should leave Virginia or Maryland without proper convoy.[30]

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[27] *Adm.* 3, volumes for the years, 1702–7.
[28] *Adm.* 1.3814, 22 December, 1702.
[29] *Adm.* 3.17, 23 October and 3 November, 1702: Headlam, 11, 14, 17, and 18 December, 1702: *Adm.* 7.336, 23 December, 1702.
[30] *A. P. C., Colonial*, Vol. 2, p. 425, 31 December, 1702.

The merchants, apparently, were not satisfied for they continued their agitation. They suggested changes and rearrangements as substitutes for the order of the Privy Council.[31] Micajah Perry, an active and highly respected merchant of London, appeared frequently before the Council at this time and in subsequent years. He was the spokesman of the others and as the time drew near for the departure of the July convoy he reported that the very merchants who had requested it now desired to have it postponed.[32] The Board of Trade advised the Council to adhere to the date announced in spite of the merchants.

It was the custom of the Board of Trade throughout the years of this war to submit annually to the House of Lords a report dealing with the state of trade. Among other things these reports invariably touched on the losses which had been suffered and the convoy arrangements which had been made.[33] It is true that in these reports the Board of Trade stressed the wisdom of its own advice and emphasised the failures of the Admiralty Council. In spite of this the House of Lords obtained a fair picture of the conditions which existed and frequently through a special committee, investigated the work of the Admiralty Council.

In the early part of 1703, a committee of the House of Lords entered into a consideration of the affairs of the navy and among other things, the Lord High Admiral was ordered to place before it a complete account of the measures he and his Council had taken to protect the West Indies and the commerce with them.[34] It is obvious that the committee was not satisfied with what had been done for upon its recommendation the Lords sent a statement to the Queen in which they emphasised the value of the West Indies and the necessity of protecting their commerce in a more adequate manner.[35]

The interest of the House of Lords in convoy arrangements had a beneficial effect for in November, 1703, the Admiralty

[31] *S. P. D. E. B., Petitions*, 239.
[32] *Adm.* 3.19: Headlam, 29 May, 1 and 4 June, 1703.
[33] See Hist. Mss. Cm., House of Lords Mss., and the *L. J.*, Vols. XVII and XVIII.
[34] *L. J.*, Vol. XVII, p. 391, 1 February, 1703.
[35] *L. J.*, Vol. XVIII, pp. 510–511.

Council requested the Board of Trade to report the best time for convoys to leave England, how long they ought to remain at the colonies and when they should begin their return voyages. The Board of Trade entered immediately into a comprehensive consideration of the problem and it consulted the merchants interested in each branch of the colonial trade before it drew up its report.[36] Finally, in December, the Board of Trade transmitted to the Admiralty council a complete convoy plan.[37]

The Board of Trade prefaced its report by stating that, as a result of inquiries, it had found the merchants so discouraged over their losses that they threatened to cease to trade to the colonies if protection were not furnished them. Furthermore, it was clear that adequate convoys had not been furnished between the West Indies and mainland colonies. The details of the plan were then set forth. Three men-of-war of fifty guns each should be assigned to the New England branch of the trade. While one of these was crossing the ocean with merchant vessels the other two should remain in colonial waters. A similar recommendation was made relative to New York with the exception that vessels employed in that service might well be smaller. The governors of Massachusetts and New York should use these ships through the winter as convoys to the West Indies. Annual convoys should be sent to Virginia, Maryland and the Carolinas. These should sail in the early winter and return in the spring. The West Indies branch of the trade should be provided for as it had been during the last years of the War of the League of Augsburg.

These proposals were rejected by the Admiralty Council. It was not that they were inadequate or that they neglected the interests of the colonial merchants. Instead, it was the opinion of the Admiralty Council that to put the plan into operation would require fifty vessels of the royal navy and the Lord High Admiral stated to the Queen this was more than could be spared. At the same time the Council pledged itself to do all within its

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[36] Headlam, 13 and 22 November, 1703: *Adm.* 1.3814, 22 November, 1703: Headlam, 22, 26, 27 November, 10 December, 1703.
[37] Headlam, 15 December, 1703: *Adm.* 1.3814, 15 December, 1703.
[38] Headlam, 14 January, 1704, p. 15.

power for the protection of commerce.[38] Somewhat later the Board of Trade inquired if the plan was to be adopted for if it were it was necessary to instruct all colonial governors. In general terms the Council replied "that all possible care will be taken for convoys to the foreign trade and for guarding the Plantations, and that they be got ready to proceed at the times the merchants desire or as near thereunto as possibly may be."[39]

In the years immediately following 1703 the Admiralty Council appeared most weak and inefficient and, in spite of convoy arrangements, merchants' losses at sea were enormous. It was reported that out of one hundred vessels sailing from the West Indies in 1704, forty-three were lost. From the beginning of the war to the middle of 1705 Massachusetts alone had lost 140 ships.[40] In the annual report to the House of Lords in 1705, the Board of Trade dwelt at length upon these conditions. Thereupon the House of Lords was moved to name a committee to consider the affairs of the navy.[41]

The committee turned at once to the Admiralty Council and requested a complete account of all arrangements that had been made and all ships that had been used in 1704 for cruising, convoying and colonial defence. The papers submitted by the Council were found to be in confusion and the Navy Board was unable to furnish an account of the expenses of the navy.[42] The Council made an elaborate statement in its own defence, pleading that it had considered the needs of every branch of the trade and had furnished as many ships as the navy could spare for convoying. The committee, however, reported that commerce had been neglected and that great losses in ships, men and revenues had been suffered.[43]

Protests against the Admiralty Council continued throughout 1705 and 1706. In the latter year a petition reached the House of Lords from Barbados stating that the governor refused to order convoys for vessels unless he shared in the merchants'

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[39] *Adm.* 3.9, 17 January, 1704: Headlam, 17 January, 1704.
[40] Headlam, 1704–5, Introduction.
[41] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 6, pp. 6 ff.
[42] *L. J.*, Vol. XVII, p. 644: Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 6, paragraphs 2028, 2057.
[43] *L. J.*, Vol. XVII, p. 644.

profits and, in addition to this, captains of royal vessels stationed there demanded pay for convoy service.[44] Merchants interested in colonial trade agitated ceaselessly by means of petitions, memorials and requests.[45] To add to this, the two factions among the merchants trading to Virginia and Maryland renewed their controversy.[46] The Board of Trade was aware of this unrest and in April, 1706, urged the Secretary of State to place before the Queen the need of a fixed annual convoy to the middle colonies.[47]

Continued agitation on the part of the merchants and losses at sea caused the Board of Trade to appeal again to the Secretary of State in December. In a memorial to Lord Sunderland, which they requested should be placed before the Queen, they urged that fixed annual convoys were necessary.[48] Shortly thereafter the Treasury Board appealed directly to the Admiralty Council, calling attention to the laxity in convoy arrangements and requesting improvements.[49] The Privy Council was reached by these appeals and in the early part of 1707 issued an order based upon the suggestions of the Board of Trade. This provided for an annual convoy to the middle colonies which should sail from England in the early autumn and return the following spring. The Admiralty Council was directed to announce this plan and put it into operation in the autumn of 1707.[50]

The announcement of this order relative to convoys to the middle colonies really meant that the terms of the proposal made by the Board of Trade in 1703 were at last being put into operation.[51] The annual convoy to the West Indies and the frequent convoys to New York, New England and the northward, as proposed in 1703, were, in actual fact, in operation before 1707. The order of 1707 provided for the final important branch

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[44] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 6, paragraph 2217.

[45] The minutes of the Council show that in 1705 Micajah Perry appeared on an average of twice a month with requests concerning convoys and trade. See also Headlam, 1706.

[46] Headlam, 22 February, 1, 6, 23 April, 1706, pp. 57, 95, 102, 120–1.

[47] Headlam, 26 April, 1706, p. 122.

[48] Headlam, 20 December, 1706.

[49] *Adm.* 1.4283, 10 and 14 January, 1707.

[50] *A. P. C., Colonial*, Vol. 2, pp. 514–6, 20 February, 1707.

[51] See above, p. 95.

of colonial trade and completed a convoy scheme which was so consistently followed year after year that it may be viewed as a convoy system.

Before the order of 1707 could be put into operation a storm of protest broke about the Admiralty Council and by the time peace was restored the problems of trade had been considered by both Houses of Parliament. The annual report of the Board of Trade to the House of Lords for the year 1707, criticized the weakness of the Admiralty Council, recounted its failures and enumerated the losses which had been suffered by every branch of trade. The House named a committee to investigate the situation and before it every possible charge was made against the Council.[52]

The Council endeavored to make an effective reply to all these charges. It was admitted that losses had been sustained by all branches of the trade but the Lords of the Council claimed that these had not been excessive when compared to the previous war. They pointed out the unusual demands which had been made upon the navy and the complete lack of cooperation shown by the merchants. They called attention to the fact that the seas were infested with enemy privateers and that, as a result, certain losses had to be expected. Finally, the Lords of the Council denied that they had muddled and in support of this they referred to the number of instances where their convoy arrangements had been adequate.[53]

The Admiralty Council's defence failed to impress the members of the House of Lords. In a statement which was addressed to the Queen they asserted that they failed to see the force of the Council's contentions. Much that had been stated was false and the Council's attitude was thoroughly bad. They assured the Queen that they meant no disrespect but it was clear that "some Persons employed by the Lord High Admiral have made the worst use imaginable of the Trust he honors them with." Finally they begged the Queen to make the navy her "first and most particular care" in order that its whole

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[52] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 7, paragraphs 2401, 2402: *L. J.*, Vol. XVIII.

[53] *L. J.*, Vol. XVIII, pp. 406 ff.

administration might be filled with a new spirit and vigor.[54]

It could hardly be considered that this condemnation of the Admiralty Council was sudden or unexpected. Still less does it appear that it was due, wholly, to political intrigue. On the contrary, the cumulative effect of investigations and criticisms, sustained by an almost unbroken record of losses at sea led directly to the action of the House of Lords. Furthermore, this condemnation of the Council reflects the importance of the merchants and the great esteem in which trade was held.

Before the investigation, carried on by the committee of the House of Lords was completed, the House of Commons had taken the same problem under consideration. They reviewed the evidence which was available and it appeared that the principal losses to colonial commerce had occurred in European waters. Consequently, a law was passed for the better securing of trade by cruisers and convoys.[55] This law was designed to ensure more adequate protection "on this side of Cape Finisterre" by designating the number of cruisers and convoys in the area indicated and the best method of controlling them. Further, it provided for a revision of the rules governing prizes in order that English vessels might be encouraged to make more captures. The specific question of convoys to America was not mentioned in this law but colonial commerce derived benefit from the greater security which was furnished in a dangerous area.

The first important result of all these measures was the reorganization of the Admiralty Council. A short time after the death of Prince George, in October, 1708, the office of Lord High Admiral was again placed in commission and from that time the Admiralty Board displayed great vigor in protecting the interests of the merchants and traders.[56] At the same time the convoy system of 1707 was in operation and its success was assured by the predominance of the British at sea during the last years of the war.[57]

[54] *L. J.*, Vol. XVIII, pp. 482–3.

[55] 6 Anne, c.65, folio edition, pp. 811–13.

[56] *C. O.* 727, 12 January, 1709: *Adm.* 2.41, 13 January, 1710: *S. P. D., Naval*, 8, 24 March, 1710: Rawlinson Mss., A, 272, folio 266, 7 February, 1711: *Adm.* 7.338, 13 March, 1711: *S. P. D., Naval*, 11, 5 November, 1711: *S. P. D. E. B.*, 245, 27 May, 1712.

[57] Clowes, Vol. 2, pp. 416–17: Mahan, *The Influence of Sea Power upon History*, p. 224.

Following the Treaty of Utrecht, as after the Treaty of Ryswick, the presence of pirates in American waters was a source of danger to commerce. The Admiralty Board continued to provide convoys, and, as has been stated, vessels for defence were maintained in colonial waters. In many cases merchantmen went armed and were able to protect themselves.[58]

In the interval of peace between the Treaty of Utrecht and 1739 the British navy was allowed to deteriorate. By the latter year Sir Charles Wager, First Lord of the Admiralty, was making strenuous efforts to prepare for the impending conflict with Spain. Other members of the Board, however, did not furnish him the assistance he deserved and when war broke out the navy had not been brought to its full strength and efficiency.

The War of the Austrian Succession, to which England's war with Spain proved to be preliminary, was, from the naval point of view, a trade war. One of the first steps taken by the Admiralty Board was to adopt the convoy system of 1707. In addition, the Board furnished as many extra convoys as possible. In fact, in 1740, Sir Robert Walpole exclaimed "peevishly and with an air of discontent" that all ships go to America, none is left for England.[59] In spite of all that was done commerce suffered heavily from the first.

Merchants were quick to criticize the Board relative to convoy arrangements and the usual wartime requests for extra convoys and postponements multiplied. The minutes of the Board for 1739 and 1740 show how numerous these were and lead to the conclusion that the merchants customarily asked for much more than they expected to receive. The merchants interested in the trade to the West Indies insisted, in 1740, that a greater number of royal vessels must be used in defence of their interests. The Duke of Newcastle, to whom these merchants appealed, directed the Board to take some action in the matter. The Board replied that in spite of disease in the navy and a scarcity of men the number of ships cruising in the channel

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[58] *Adm.* 3.32, 22 December, 1720 and 9 January, 1721.

[59] Yorke, P. C., *The Life of Lord Chancellor Hardwicke*, Vol. I, 1 October, 1740, Duke of Newcastle to the Lord Chancellor.

would be increased.[60] Later, the merchants forwarded their requests directly to the Board. In reply, the Lords of the Admiralty informed the merchants that, although all that they asked could not be granted, as many ships as possible would be used in their behalf.[61]

Toward the end of 1741, over two hundred merchants, interested in all branches of trade, represented their losses to the Privy Council and requested that the Admiralty Board should be required to make more adequate arrangements. They stated that over one hundred merchant vessels had been lost during the first ten months of 1741 and that more than three hundred had been taken by the enemy since 1739. In their opinion most of the losses could have been prevented if a few additional men-of-war had been wisely used. The North American trade was particularly exposed and had suffered heavily because naval officers had failed to perform their duties.

The Lords of the Admiralty answered these charges with the greatest vigor and it is obvious that they were in an infinitely stronger position than had been the Admiralty Council during the War of the Spanish Succession. They submitted a list of ships which had been used for cruising and convoying and they offered proof that all convoy arrangements had been made with the greatest care. Specifically, they stated that the trade to Newfoundland had suffered no losses and that to the West Indies had not suffered since the first year of the war. In regard to the other branches of the colonial trade losses had been comparatively small and had not been caused by a lack of convoys. In fact, they stated that sixteen convoys had been furnished for the protection of colonial trade exclusive of the middle colonies. As far as the trade of the latter was concerned convoys had been furnished every time the merchants had requested them. In the opinion of the Board the majority of losses had not been caused by a lack of convoys but rather by the actions of merchant vessels. These refused to obey the signals of officers commanding convoys and habitually separated themselves from

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[60] Richmond, Vol. 1, pp. 182–3.
[61] *Adm.* 3.44, 31 October, 1740.

their convoys in an effort to arrive first in port.[62] The reply of the Board was convincing and the Privy Council issued an order to the merchants requiring them to correct all abuses.

As the war continued losses to commerce were not wholly prevented. In 1742, an Act was passed by Parliament similar to that of the year 1708.[63] By this it was hoped that cruising and convoying between England and Cape Finisterre would be more adequately carried out. Throughout 1743 and 1744 an average of over thirty vessels each month was employed to cruise and convoy.[64] All requests made by the merchants were carefully considered and, usually, were granted. As far as was possible every royal vessel which sailed in either direction between England and the colonies was used as a convoy.[65]

During the course of the war it became an accepted doctrine of the service that it was the chief duty of a convoy commander to protect the shipping under his care. He fought to defend his convoy, not to destroy the enemy, and if possible he never left the vessels he was protecting. In 1746, Commodore Fitzroy, in command at the Leeward Islands, was specifically instructed to follow this principle and in the following year Commodore Legge in command on the same station, received like instructions.[66] Furthermore, the Admiralty Board adopted the practice of defending naval officers who, as a result of this interpretation of their duty, were subjected to criticism.

In the spring of 1747, a committee of London merchants appeared before the Board. Their attitude was unusual, for, although they enumerated their losses and sought a remedy, they seemed rather to offer their aid than to complain. They called attention to the fact that London merchants alone had lost no less than twelve hundred vessels in the course of the war, eight hundred of which had been engaged in colonial trade. In their opinion the Admiralty Board was not to blame. Instead,

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[62] *Adm.* 7.340, 28 November, 1741: Richmond, Vol. 1, pp. 183 ff.
[63] Richmond, Vol. 1, pp. 186 ff.
[64] Richmond, Vol. 1, p. 192.
[65] *Adm.* 3.55, 24 April, 1744: *Adm.* 2.500, 2, 23, 25 September, 1746: *Adm.* 3.56, 8 January, 1747: *Adm.* Letter Book, 2182, 5 January and 27 March, 1747.
[66] Richmond, Vol. 3, pp. 51, 67.

inefficient naval officers and the fact that enemy privateers infested colonial waters were contributory causes. The Admiralty Board considered the committee's statement and, while admitting the losses, called attention to the fact that merchant vessels continued to disobey convoy orders and abused their privileges as vessels sailing under royal protection.[67]

The War of the Austrian Succession proved to be especially disastrous to trade. Both Great Britain and her enemies struck boldly at commerce but in the end Great Britain was most successful for first Spanish and then French commerce was severely crippled. Although estimates place English losses at more than three thousand vessels yet the balance in ships and property destroyed remained in favor of the English.[68]

During the Seven Years' War the convoy problem, as far as America was concerned, was a much easier one to solve than had been the case in previous wars. The colonies occupied an important position from the time the war broke out. The number of ships stationed there was increased and squadrons and fleets operated in colonial waters.

The Admiralty Board maintained regular convoys for the colonial trade throughout the war and, in addition, granted extra convoys whenever it was possible. The intended departure of men-of-war and transports was customarily announced in advance in order that merchant vessels might sail with them for protection. Trade between colonies and to England was carefully guarded and it appears that the arrangements which were made proved adequate.[69]

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[67] *Adm.* 3.57, 14 April, 1747.
[68] Richmond, Vol. 3, pp. 243 ff.
[69] *Adm.* 2.520, 7 April, 1757: *Adm.* 2.78, 2 June, 1757: *Adm.* 2.1331, 10 June, 1757: *Adm.* 1.3818, 15 January, 1761: *Adm.* 3.68, 19 January and 5 February, 1761: *Adm.* 2.530, 12 March, 1761.

VI

The Impressment of Seamen

By no means the least urgent problem which the British government faced in the eighteenth century was that of securing a sufficient number of seamen to satisfy the necessary requirements of the royal navy. When England was at peace it was possible to reduce the full complement of seamen without grave danger, but when naval wars were being waged it was vital to the safety of the state and the success of English arms that all royal vessels should be fully manned and fit for actual duty. As the events proved, however, the problem was not one that was confined wholly to the years of actual warfare. There was a limit beyond which a reduction in the number of seamen could not safely go, even in time of peace, and the nature of the peace which actually existed determined, in large measure, this limit. It has been pointed out that there were years of nominal peace between 1689 and 1763 which were, in reality, periods of preparation for subsequent wars and there were frequent threats of war which demanded naval preparation and readiness. Throughout such years of troubled peace the lack of seamen was frequently felt as a distinct danger.

While the War of the League of Augsburg and the War of the Spanish Succession were being waged it appeared over and over again as if the navy might be incapacitated, in large measure, by a lack of men. The danger was less acute from 1739 to 1763, but was never wholly absent. When these facts are remembered it will be easier to understand the earlier attitude of the Admiralty Board in insisting that the American colonies ought to provide seamen when they were needed by royal vessels in colonial waters. It may be asked why it was that men were so hesitant to serve aboard men-of-war. An answer, at least in part, may be found by considering the conditions under which men served in the navy and by noting that they were definitely drawn away from the royal service by trade and privateering.

Without attempting to describe fully the conditions which

existed in the navy, it is well known that seamen were poorly paid and fed and were subject to rigorous, ofttimes brutal, discipline; voyages were slow and tedious; provisions for sanitation and the prevention of disease were far from adequate and the rate of mortality was appallingly high.[1] These conditions were only slightly improved by 1763.[2] The naval service was further rendered undesirable because of the fact that service in colonial waters demanded an increasing number of men and vessels after 1689. To be sent to colonial waters meant a long absence from England. In the West Indies there was the danger of deadly tropical diseases, and in the northern colonies the winters were extremely cold and caused extended periods of enforced idleness. These conditions were particularly distasteful to native-born Englishmen and, in many cases, were equally so to Americans.

While seamen were repelled from serving in the royal navy they were actively attracted to trade and privateering. The tremendous growth in the value and importance of English trade created an increasing demand for seamen. Much higher wages were paid by merchantmen than by the royal navy and merchants offered other inducements in order that they might secure seamen. Also during the four wars of the period the British government commissioned numerous privateers. These offered adventure along with the chance of securing great wealth if captures were luckily made. Many seamen who otherwise would have served in the royal navy turned to privateering because it offered them more.

When war broke out in 1689, the English government was under no illusions for it was obvious that a full complement of seamen could not be obtained for the navy by voluntary enlistments. Consequently, during the War of the League of Augsburg, as well as during the three subsequent wars of the period, two principal means were used in an effort to secure an adequate

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[1] Clowes, Vol. 2, pp. 219–229. Illustrations and quotations given by Clowes are drawn from "The Diary of Henry Teonge," London, 1825. Teonge was, successively, a chaplain on board H. M. S. *Assistance*, *Bristol* and *Royal Oak* from 1675–79.

[2] Clowes, Vol. 3, pp. 22–3.

supply of men. They were impressed for service in the navy and embargoes were placed upon merchant vessels. In addition, it might be mentioned, bounties were offered at different times to secure enlistments but without great success. Of these two principal means, impressments proved the more difficult and brought the government and the Admiralty Board face to face with a colonial problem of importance.

A brief statement concerning the nature and application of the embargo will show that it was an inadequate means of securing seamen. The embargo was used chiefly in time of war to restrain merchant vessels from sailing until special permission was granted or until the embargo was raised. Embargoes were either general in nature, applying to all merchant vessels, or particular, applying to vessels engaged in particular branches of the trade. Orders announcing embargoes were issued by the King in Council but the execution of them devolved upon the Admiralty Board assisted by the Commissioners of Customs.[3]

Embargoes were employed with two principal purposes in view. One was to insure the safety of vessels engaged in trade and the other was to secure seamen for the royal navy. Merchantmen, if left unhindered, would sail singly or in small groups and it was obvious that under such conditions adequate protection could not be furnished them. Under an embargo, they collected in the ports and when allowed to sail they did so in groups with men-of-war assigned to them as convoys. Merchant vessels held in port under an embargo were forced to surrender a part of their seamen for service on men-of-war. Frequently, embargoes were ordered for the sole purpose of obtaining seamen. It was found that a sufficient number of seamen could not be obtained in this way without crippling trade. Merchant seamen resented being taken in this fashion and they often deserted. Above all, embargoes did not make it possible to secure unemployed men who were available nor could royal vessels in colonial waters obtain additional men by this means. Therefore, although

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[3] Admiralty in-letters from the Privy Council and Treasury out-letters to the Commissioners of Customs make these facts clear. Early examples may be referred to as follows: *Adm.* 1.5140, 8 August, 1689: *Treas.* 11.12, 23 September, 1690: *Adm.* 1.5142, 20 August, 1691.

the embargo was used as a means of obtaining seamen it was not sufficiently effective and pressing continued to be relied upon as the surest means and as the one which had been used most consistently in the past.

As has been suggested, the impressment of seamen was not a new practice and after 1689 it was carried on both in England and in the colonies. Captains of royal vessels and commanders of squadrons stationed in American waters found, repeatedly, that their complements of men were reduced as a result of the long voyages, disease and the hazards of the service. As it will appear, desertions were numerous in colonial waters and to apprehend a deserter proved to be particularly difficult. Skilled and able seamen were to be had in the colonies but they could not be induced to enlist. Under such conditions the Admiralty Board looked upon the pressing of men in the colonies as a necessity.

In August, 1690, the Admiralty Board directed that orders for impressment should be printed in order that an adequate supply might be on hand to be furnished to officers when necessary. These orders, which were valid in the colonies as well as in England, were based upon the authority of the Privy Council which had authorized the Admiralty Board to press as the necessity might arise.[4] From the first, impressments met with resolute opposition both in England and in the colonies.

In England it does not appear that the principle of pressing was questioned but men who were likely to be taken by the press gangs made every effort to escape. So grave was the situation which early developed that the whole question of supplying seamen for the navy came up before a committee of the House of Lords in 1693.[5]

In the previous year Admiral Russell had reported to the Lords of the Admiralty that it was almost impossible to obtain seamen in England even by pressing and he pointed out that the fleet was suffering because of a lack of men. The committee of the House of Lords learned that there were few volunteers for

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[4] *Adm.* 1.5141, 6 February, 1690.
[5] Hist. Mss. Cm., House of Lords Mss., Vol. 4, pp. 225–6, May, 1692.

the navy. Officers engaged in pressing in the western ports met with hindrances and delays. Seamen fled before them and were protected by persons who should have turned them over. Similar reports were to be had from other quarters.[6]

In the colonies there was a general aversion to coercion and the colonists in resisting impressment brought forward every possible argument to justify their action. It was pointed out that English officers who pressed men were often tactless and violent. The right of naval officers to press in the colonies was questioned. Perhaps the strongest argument which was brought to justify the colonial attitude was that all available men were needed for distinctly colonial enterprises. Often when seamen could not be found by the press gangs colonial artisans and other able bodied workmen were seized. This was resented in the colonies and deserters from men-of-war were sheltered. Frequently naval officers were so hindered and delayed that they found their difficulties almost insuperable.[7]

Evidence of the colonial attitude towards impressment reached England from several sources. The governor of Massachusetts reported to Lord Nottingham that he had been forced to suspend Captain Short who was stationed at Boston. Short had, contrary to his orders, allowed his men ashore and they had deserted. Thereupon he had violently pressed men, among whom he took two members of the colonial assembly. This had caused a great stir in the colony.[8] Thirteen Jamaica merchants represented the hardships placed upon the trade of the island by the pressing activities of officers of men-of-war. They accompanied their representation by numerous depositions taken in the island. It was shown that seamen were taken from merchant vessels with the result that trade was hindered or interrupted. The scarcity of the population in Jamaica made the loss of men almost intolerable, especially since the press gangs did not confine their activities to idlers. It was stated that men left the island rather than run the risk of being taken and many of those who

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[6] *Ibid.*, n.s., Vol. 1, p. 147, paragraph 765.
[7] Fortescue, 15 February, 1693, p. 24.
[8] *Ibid.*

were pressed resented the treatment so much that they had been known to jump overboard in an effort to get to shore and escape.[9] The colonial governors who exercised control over naval officers stationed in American waters were seldom able to give them material aid.

In 1696, definite efforts were made to secure adequate numbers of seamen in England and to settle the question of impressment as far as the colonies were concerned. By a law of that year which was designed "for the Increase and Encouragement of Seamen" it was provided that special inducements should be offered to seamen who would enlist for the royal service.[10] The chief inducements set forth were an annual bounty of forty shillings, the right to enjoy all the benefits of Greenwich Hospital and the exclusion of all but seamen registered under this Act from membership in Trinity House. In spite of these terms it proved impossible to obtain a sufficient number.[11]

In January, 1696, the Admiralty Board issued an order that only commissioned officers should have the right to press out of sight of their ships while within sight of their vessels press gangs were to be directed by no less than a warrant officer.[12] This order affected pressing activities in the colonies as well as in England and was designed to render pressing less violent and irresponsible. Not long after this the Privy Council gave special attention to the problem of impressment in the colonies. In April, 1696, the Council referred to the Admiralty Board for its opinion, a report from the Lords of Trade. This report pointed out that naval officers and governors were in constant disagreement, particularly because of impressment. Pressing, as it was practiced, was irregular and was a positive harm both to trade and the colonies.[13] Apparently the Lords of the Admiralty were in favor of placing impressment in the colonies upon a surer footing for an Order in Council was issued the following December. By this order the sole power to press in the colonies

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[9] Fortescue, 18 September, 1696, pp. 122–3.
[10] 7 and 8 William III, c.21.
[11] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 2.
[12] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 2, p. 315, 8 January, 1696.
[13] *A. P. C., Colonial*, Vol. 2, p. 298, 29 April, 1696.

was placed in the hands of governors. When a naval officer in American waters found himself in need of men he was to apply to the nearest governor and thereupon it became the duty of the governor to see that men were furnished.[14]

At the same time the Board of Trade made a proposal to the Privy Council who in turn referred it to the Admiralty Board. This proposal, which was similar to a suggestion made previously by Jamaica merchants, set forth that the friction which had been experienced in the colonies over impressment could best be relieved by sending extra seamen on board merchantmen which were sailing to the West Indies.[15] No order was issued by the Privy Council as a result of this suggestion but the Admiralty Board frequently sent out extra seamen by men-of-war which were ordered to the colonies.[16]

The order of the Privy Council of December, 1696, was immediately put into effect by the Admiralty Board. The captain of H. M. S. *Harwich* was notified that he no longer possessed the right to press men. If he or any of the vessels under his command were in need of men they were to apply to the governor of the colony who was instructed to furnish men who would go voluntarily to sea.[17] The commanding officer of the squadron stationed in the West Indies received definite orders: "do not impress any men within or in sight of any of his Majesty's Plantations in America, nor from any of the merchant ships there." If he or any of the captains under his command should be in need of men they were to apply to the nearest governor who as vice-admiral would procure men for them.[18] At the same time the Board notified colonial governors concerning the new order and instructed them in their new duties. They were informed that naval officers no longer possessed the right to press men in or in sight of any of the American colonies. Naval officers had been instructed to apply to governors as vice-admirals for necessary men. Consequently, it was the duty of the gover-

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[14] *Ibid.*, p. 309, 3 December, 1696: Fortescue, 3 December, 1696, p. 236.
[15] Fortescue, 18 September, 1696, pp. 96–7, 122: *A. P. C., Colonial*, Vol. 2, p. 309, 3 December, 1696.
[16] Fortescue, 1696–7, p. 296.
[17] *Adm.* 2.22, 29 January, 1697.
[18] *Adm.* 2.22, 3 February, 1697.

nors to furnish men in every case where application was made to them.[19]

The order of the Privy Council and the instructions issued by the Admiralty Board were not effective, for naval officers continued to press in the colonies. This was found to be necessary since a sufficient number of seamen was not sent out from England to supply the needs of royal vessels in American waters. Colonial governors, when they were applied to, as the Privy Council had directed, found themselves unable to comply, for volunteers could seldom be obtained and when force was used governors met the same colonial opposition which naval officers had met.

The problem did not disappear in the colonies, as might have been expected, after the Treaty of Ryswick in 1697. The period of peace which extended to 1702 was marked by preparation for war and by special activities in colonial waters where the danger from France was great and where pirates were numerous. Naval officers in America, in the discharge of their duties, were active and consequently they pressed men.

In November, 1699, Secretary of State Vernon requested the Admiralty Board to give its opinion on a report which had been prepared by the Board of Trade and which dealt with impressments in America.[20] If this opinion was given it is not evident that any action was taken on it. In 1700, Sir William Beeston, Governor of Jamaica, set forth at length the difficulty he had experienced with Admiral Benbow. The governor reported that after he had collected seamen in order that a cruise might be made against pirates, Benbow "pressed some and the rest ran away to the Northern Plantations, and when I writ him about it . . . that it was contrary to His Majesty's Order and a great injury to the country and oppression to the northern people that come here with provision, he writ me that he wanted men, and, come from the North or South he would have them."[21] In spite of this report no action was taken in regard to Admiral Benbow's activities.

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[19] *Adm.* 2.24, 7 June, 1697.
[20] *S. P. D. E. B.*, 204, 12 November, 1699.
[21] Headlam, 5 January, 1700, p. 19.

By the year 1701, war with France appeared so certain that the question of manning the fleet was considered by a committee of the House of Lords. The principal members of the Admiralty Board were called before the committee and were asked to give their advice. No better method could be found than that which had been used previously and it was recommended that not only should men-of-war be ordered to press but that an embargo should be laid so that one-third of the seamen on merchant vessels in English harbors might be taken and turned over to the royal navy.[22] All the while, opposition to the pressing activities of the navy continued among English seamen and some of them were known to have protested "that they had rather turn pirates and be hanged than serve" in the fleet. They were described as having an infinite dread of being impressed because of an aversion to the King's service.[23]

As might have been expected impressments in the colonies increased after the War of the Spanish Succession was declared in May, 1702, and colonial opposition was as insistent as it had been at any previous time. Captain Jackson of H. M. S. *Swift*, stationed at Boston, pressed so many men from merchant vessels which were in the harbor that the latter could not sail. The acting governor had not been applied to for men and consequently he ordered Jackson to cease. Thereupon Jackson made an effort to leave the harbor with the seamen he had already seized but after being fired upon he turned back. The acting governor then suspended him and released the impressed seamen.[24]

In the West Indies feeling ran high and there was much bitterness between the colonists and naval officers. In a report to the House of Lords in December, 1703, the Board of Trade referred to these facts at length. It stated that it had received frequent complaints from Jamaica and it had been represented that captains of ships practiced pressing in such an irregular manner that all types of useful laborers were taken, trade

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[22] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 4, p. 162, paragraph 1576.
[23] Hist. Mss. Cm., Vol. 26, Duke of Portland Mss., part VIII, p. 89, 15 July, 1701, E. Dummer to Robert Harley.
[24] Headlam, 20 July, 1702, pp. 474–5.

suffered and inhabitants left the island in order to escape the danger. On the other hand the colonial assembly had passed a law that any person who should impress a man in Jamaica would be liable to very severe penalties. The Board of Trade recommended in its report that the act of the Jamaica assembly ought to be disallowed and that in all the colonies the right to impress should be placed in the hands of the governors as vice-admirals.[25]

In February, 1702, a committee of the House of Lords investigated the service of Rear Admiral Graydon as commander of the West Indies squadron. In the course of this, Graydon's pressing activities were bitterly assailed by colonial agents who appeared in person and presented letters, depositions and petitions to the committee. According to the information which was presented Graydon had been very violent and had intimidated men, cursing them, threatening to whip and pickle them. In seizing men, it was alleged, he broke open houses and terrorized the chief towns. In Kingston so great was the excitement "that the inhabitants . . . were forced to keep in arms a whole Sabbath day on their own defense." He had carried away many of the best people along with seamen and had caused great injury to trade. Admiral Graydon in his reply to these charges denied the facts which were presented and in this he was sustained by the captains who had served with him in the West Indies. Captain Wavell had made a previous report to the Admiralty Board and this was produced. He stated that the governor and council of Jamaica had endeavored to induce him to join with them in bringing discredit upon Graydon. When he refused they had heaped abuse upon him. Other royal officers testified that no houses were broken open and when useful persons were taken by mistake they were released. It was stated further that Graydon, instead of injuring trade, had offered seamen to the merchantmen but his offer had been declined. The masters of trading vessels had not suffered from a lack of seamen but had been "retarded by their bowls of punch and other allurements."

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[25] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 5.

Graydon's defence did not convince the committee. In its address to the Queen in March, 1702, the House of Lords gave his violence and irregularity in pressing as one of the reasons for recommending that he should be considered unworthy of further employment in the navy.[26] Immediately after this the Admiralty Council removed him from active service and, in 1705, he was dropped from the navy list.[27]

The affairs of the navy and the condition of English power at sea caused great concern until French activities began to decline in 1708. Several investigations were made during these years and the question of manning the fleet constantly arose as a part of the general problem. In the early part of 1705, a committee of the House of Lords considered a proposal made by Daniel DeFoe. He claimed to have found a way to man the fleet without delay, expense or the violence of pressing. In his opinion the chief difficulties in the way of securing seamen lay in the difference between the wages paid by merchants and by the navy. Men could not be expected, in DeFoe's opinion, to serve the Queen at twenty-three shillings per month when merchants paid fifty-five. The chief provisions of his proposals were that by law the rate of pay aboard merchant vessels should be brought down to the level of the navy, that all seamen should be required to register with the government and that merchants should be required to pay their seamen through government officials.[28] The committee recommended that the proposal made by DeFoe should be placed before Parliament but no action was taken.

Again, in 1706, the most influential members of the Prince's Council were called before a committee of the House of Lords who were considering the affairs of the navy. George Churchill, Sir Clowdesley Shovell, Sir John Jennings, Sir George Byng and Sir Stafford Fairborne agreed that the payment of bounties and the pressing of men were not sufficient to obtain seamen for the fleet in the face of wages paid by the merchants. The com-

[26] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 5, paragraph 1985: *L. J.*, Vol. XVII, p. 506, ff. p. 550: Headlam, 29 June, 1703, p. 517.
[27] Clowes, Vol. 2, pp. 503–4.
[28] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 6, paragraph 2058, pp. 223–226, 10 February, 1705.

mittee thereupon reported that an Act of Parliament dealing with the problem ought to be passed.[29]

Notwithstanding the repeated suggestions which were made, an Act of Parliament was not passed dealing with the general problem of manning the fleet. Yet the question of impressment in the colonies was dealt with in a law which was passed primarily for other purposes. It was clear, as a result of reports and investigations, that the war was not being waged with success, especially in the West Indies. As a result, a general Act was passed, in 1707, for the purpose of encouraging colonial trade and the more active prosecution of the war.[30] This Act, which was designed primarily as a war measure, conceded much to the familiar colonial attitude toward impressment. According to its provisions no mariner, not a deserter, might be impressed from any privateer or merchant vessel in colonial territory. To prevent the concealment of deserters all privateers and merchantmen were required to furnish to customs officials for each voyage a list of men who were on board. All merchant and packet vessels sailing to America were required to carry extra seamen for the men of war stationed in colonial waters and in obeying this section of the law a number of extra seamen equal to one-fifth of the ship's total complement was to be carried. By the provisions of this law, then, protection was extended to seamen employed on merchantmen and privateers while deserters from royal vessels and idle mariners were liable to seizure. The earlier practice of sending extra seamen to the colonies was now placed upon a sound basis as a legal requirement.

As far as the question of impressments in the colonies was concerned, steps were taken to put this law into effect. The Admiralty Council issued orders to naval officers stationed in colonial waters that if they were in need of men they were not to press but were to apply to the governors. The Queen dispatched special instructions to all captains of ships directing that no pressing should be carried on in the colonies save in a legal manner.[31] Evidence of agitation in the colonies over

[29] Hist. Mss. Cm., House of Lords Mss., n.s., Vol. 6, paragraph 2058, pp. 383–7: *L. J.*, Vol. XVIII, pp. 61 ff.

[30] 6 Anne, c.37.

[31] *S. P. D. E. B.*, 210, 29 April, 1708.

impressment disappeared and it may be assumed that the law was effective until the close of the war.

It was the opinion of the Admiralty Board that the law of 1707 was a war measure and expired upon the signing of the Treaty of Utrecht in 1713. A large number of men-of-war were stationed in colonial waters after 1713, chiefly for operations against pirates, and commanding officers were instructed to press men if necessary although application was first to be made to governors. The colonists opposed the practice as bitterly as ever for it was the universal opinion in America that the law of 1707 was still in force and that, consequently, most of the pressing that was done was illegal. In order that the question of legality might be settled definitely Attorney-general Sir Edward Northey was consulted. He replied: "In humble obedience to your Lordship's Commands . . . whereby you were pleased to command my opinion Whether the Act for the Encouragement of the trade to America passt in the 6th year of her late Majesty's Reign continues in force. I have considered the said Act and am of the opinion That the Act is not now in force as to any matter whatsoever happening after the war ended, All parts of that Act being adopted for the time of the War."[32]

It may be concluded that the opinion of the Attorney-general was not given wide currency either in England or in the colonies for merchants and other persons interested in trade persisted in the opinion that the law was still in force and opposition in the colonies to pressing still continued. In 1727, the London merchants trading to Jamaica appeared before the Admiralty Board in order to protest. They contended that pressing had been carried on so extensively in the West Indies that trade had been crippled both from the actual loss of men and because unemployed seamen were intimidated and refused to offer their services. The merchants thought that such activities were illegal because they were contrary to the Act of Parliament passed in the reign of Queen Anne. The Admiralty Board replied that the law the merchants referred to had positively lapsed but that a plan for sending out extra seamen to royal

[32] *C. O.* 323.7, 11 February, 1716.

vessels was being considered. Thereupon the merchants offered to carry the extra seamen free of charge at the rate of ten men to each vessel sailing to Jamaica. The Board requested time to consider the matter and directed that the merchants return in one week for further conference.[33]

As the Admiralty Board had directed, the London merchants returned in one week. During the time which had elapsed their position, in some respects, had undergone a slight modification. They proposed that the part of the Act of Queen Anne's reign which forbade impressment in the colonies should be considered as remaining in force and, that being the case, they offered to carry extra seamen for royal vessels stationed in American waters at the rate of six pence a day for each man. The Lords of the Admiralty rejected both of these proposals. They pointed out that the Act in question had lapsed and therefore could not be treated as if it were in force. Further, they stated, it would be impossible to secure enough extra seamen in England to satisfy the needs of the service in the West Indies.[34] They closed the interview by promising that they would take steps to render impressments less burdensome. In compliance with this promise, orders were sent to captains in the West Indies directing that no more than one out of five men should be pressed from merchantmen save in cases of the greatest necessity. As for ships bringing slaves from Guinea, no seamen whatsoever were to be taken from them until the negroes were unloaded.[35]

After war with Spain broke out in 1739, the question of manning the fleet appeared again in its most difficult form. In England men were obtained with difficulty by means of the registration of seamen, embargoes and pressing. No successful effort was made to send extra seamen to the colonies and it was generally considered by the British government that naval officers in America might press when necessary. This was resisted as an illegal practice in all parts of America for it was held that the law of 1707 was still operative. To aggravate the colonial situa-

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[33] *Adm.* 3.36, 21 December, 1727.
[34] *Adm.* 3.36, 28 December, 1727.
[35] *Ibid.*

tion, seamen deserted freely from royal vessels as soon as they touched at American ports. It was reported to the Admiralty Board by naval officers that the colonists induced seamen, especially carpenters and mechanics, to leave their vessels and, by shielding them, prevented their capture. It was reported, further, that after vessels had suffered the loss of men by desertions and losses, due to the hazards of the service, naval officers were forced to recruit their strength. When they applied to governors for seamen they received no aid and when they endeavored to press they were resisted to the point of violence.

When the colonial attitude was made known in England, the first action taken was to remove all doubt concerning the law of 1707. Sir Dudley Ryder, the Attorney-general and Sir John Strange, the Solicitor-general, were appealed to for their opinion. After quoting the opinion given by Sir Edward Northey in 1716, the two law officers of the Crown replied: "We have perused the several clauses in the American Act and by comparing the several clauses together, it seems to us, that the Act is not now in force, but expired at the end of the then war."[36] At this time, however, this opinion was not transmitted officially to the colonies.

The problem of desertions next demanded the attention of the Admiralty Board. In August, 1742, letters were sent to all governors in North America. They were ordered to do all in their power to prevent the inhabitants of the colonies from inducing seamen to desert. Further, if the need arose they were to do all in their power to apprehend deserters and in case a ship were weakened by desertions in spite of all that could be done they were to assist in securing seamen.[37]

These orders to colonial governors were apparently without effect and in the following years the Admiralty Board appealed to the Duke of Newcastle as Secretary of State. It was stated that, in spite of orders, desertions were continuing in the colonies and the governors appeared to be powerless. A further danger was pointed out. It had become a common practice in

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[36] Chalmers, *Opinions*, Vol. 1, pp. 224–5, 17 July, 1740.
[37] *Adm.* 3.46, 13 August, 1742.

the colonies to prosecute, under the Act of 1707, all naval officers who were forced to press and when such an action was instituted in a colonial court conviction inevitably followed. Finally the Duke of Newcastle was requested to apply to the King for a solution of the problem for the Board admitted that it alone could not hope to succeed.[38]

The Admiralty Board received further intelligence from America concerning events there. Captain Gordon, stationed at Virginia, reported that he had been brought to trial in the colony because he had impressed men. He had to face the opposition of the Virginia merchants for they had banded together to prosecute any captain who pressed. The Board dispatched letters to Lieutenant-Governor Gooch of Virginia notifying him that legal action could not be taken against naval officers under the Act of 1707 for it was no longer in force. Gooch was ordered to do all in his power to put a stop to such prosecutions and he was to aid in furnishing seamen to men-of-war at Virginia.[39]

Captain Scott at Boston lost forty men by desertion upon the eve of sailing. After he applied to the governor and received no aid he was forced to press men. Captain Ellis at New York was prevented from sailing when one hundred of his men deserted. When he appealed to the governor he received no assistance and he was warned not to press men because of the Act of 1707. In spite of this warning he began to press seamen for which the merchants of New York threatened to sue him and the mob to take his life. Similar reports came from other mainland colonies and the West Indies.[40]

For four years, since the beginning of the war with Spain in 1739, the Admiralty Board had heard of its orders relative to impressment being disobeyed in the colonies, of naval officers hindered and of the continued colonial adherence to the opinion that the Act of Queen Anne's reign was still in force. By 1743, the evidence which had been received indicated that some action was necessary or the colonial attitude would prevail. The Board made a final effort to impress its opinion upon the colonies. In

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[38] *S. P. D., Naval*, 26, 15 March, 1743.
[39] *Adm.* 3.47, 30 July, 1743.
[40] *S. P. D., Naval*, 26. These reports were received in 1742–43.

August, 1743, it dispatched letters to all American governors. The chief purpose of these letters was to call attention to the fact that in 1740 the law officers of the Crown had given the opinion that the Act of 1707 was no longer in force. Governors were further enjoined to do all in their power to assist in obtaining seamen.[41] In some cases at least the information furnished by the board in these letters was given wide currency in the colonies.[42]

Shortly after these letters were sent to the colonies the Admiralty Board laid the whole matter of impressment in America before the Privy Council. The Lords of the Admiralty stated that the desertion of seamen and the shielding of these deserters by the colonists had become a common practice in America. The inhabitants of the colonies clung to the opinion that the Act of 1707 was still in force in spite of the fact that governors and judges of the courts of vice-admiralty had been informed to the contrary. Captains had been brought to trial and imprisoned if they pressed men and as a result the service was seriously threatened. The Admiralty Board admitted that in spite of the fact that governors seemed anxious to aid they accomplished so little that they were either insincere or powerless to act. Finally, in making this report, the Board sought the aid of the Privy Council in finding a solution to the problems which were described.[43]

The Privy Council did not act on this appeal. In 1746, the Admiralty Board, in reporting the particular case of Captain Forrest, turned to the Secretary of State for aid. The captain, in command at Boston and in need of men, applied to the Lieutenant-Governor for aid but nothing was done to assist him. Forrest was then able to induce the sheriff to go after deserters known to be in hiding in Boston but after numerous fights occurred he was forced to give up the search. The Board informed the Secretary of State that "the violent Spirit that reigns in all his Majesty's Colonies . . . to oppose and obstruct the officers of his Majesty's ships . . . would appear surprising, if we had not

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[41] *S. P. D., Naval*, 26, 19 August, 1743: *Adm.* 2.1054, 19 August, 1743.
[42] *C. O.* 5.1337, 23 June, 1744.
[43] *S. P. D., Naval*, 26, 26 September, 1743.

so many melancholy instances of it." They urged upon the Secretary of State the fact that if the colonists could not be controlled the usefulness of men-of-war in American waters would be greatly reduced.[44] This appeal produced no results and the colonists continued to assert themselves.

The merchants in London who were interested in colonial trade were suffering losses because of the continued confusion and conflict over pressing. A committee of merchants in an effort to find a solution came before the Admiralty Board to submit the details of a petition which they proposed to present to the House of Commons. Their chief proposal was that a law similar to that of 1707 governing the pressing of seamen in the colonies might be enacted. They pointed out that this would be the best solution of the problem. The Board declined to endorse this independent action of the merchants.[45]

By the year 1746, it appears, the Admiralty Board had exercised all the power and influence it possessed in an effort to induce the colonies to obey instructions and conform to the practices of the Brit sh navy. Neither the Privy Council nor the Secretary of State had been able to render any effective aid. The colonists were left to hinder impressments as they saw fit. There is no evidence that any member of the Board suggested an appeal to force, and had this been done it is unlikely that it would have been favorably received. In fact, Parliament, faced with numerous problems of the first magnitude, did not give this problem a direct consideration. Impressments did not cease in the colonies after 1746 but were carried on, under necessity, when it was possible. Often it was the activity and personal courage of British naval officers which enabled royal vessels to remain on their stations and discharge their duties.

In 1749, the Admiralty Board admitted, in effect, that it was unable to support naval officers in America. It was reported by Captain Norbury, stationed at Virginia, that he had been roughly treated because he had impressed four idle men who were loitering on the water front at Norfolk. In reply the Lords of the

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[44] *S. P. D., Naval*, 30, 11 February, 1746.
[45] *Adm.* 3.53, 22 March, 1746.

Admiralty directed "that he be acquainted in answer . . . that the Lords are surprised he could trouble the trade in pressing men in this time of peace . . . and they admonish him to behave more discreetly and not render his Majesty's service disagreeable to his subjects."[46] Later in the year, however, when it was learned that Captain Norbury had been brought to trial in Virginia for pressing the four men the Board ordered a solicitor to review the case.[47] It is clear that the Admiralty Board had no desire to raise the issues involved in the colonial attitude.

During the Seven Years' War there was no material change in the colonial attitude. The Board continued to receive reports from America which told that impressments were violently resisted. Men engaged in carrying out the press often suffered severe treatment and officers in charge were frequently brought to trial in colonial courts.[48] But these reports were not as numerous as they had been in previous years and the Admiralty Board acted upon each particular case without endeavoring to find a solution for the general problem.

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[46] *Adm.* 3.60, 28 January, 1749.
[47] *Adm.* 2.1055, 19 August, 1749.
[48] *Adm. Letter Book*, 2188, 16 March, 1756: *Adm.* 2.1055, 4 April, 1756: *Adm.* 2.1056, 4 March, 1760.

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